(1) 88-397

Supreme Court, U.S.
FILED
SEP 6 1988
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

BRAHMA S. KAUSHIVA,
Petitioner,

v.

BOARD OF TRUSTEES OF
THE UNIVERSITY OF THE
DISTRICT OF COLUMBIA, et al.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the United States
Court of Appeals for the District
of Columbia Circuit

Dr. Brahma S. Kaushiva,
pro se
15504 Culp Court
Silver Spring, Maryland
20904
Phone No. (301) 384-2722

QUESTIONS PRESENTED FOR REVIEW

Whether petitioner's constitutional rights were denied where a jury trial was disallowed in a mixed claim joined with claim under Title VII along with several other claims for which a right to jury trial exists.

Whether the summary affirmance of district court's order of May 9, 1986 (summary judgment in favor of the Faculty Association) and July 10, 1987 (discrimination and retaliation under Title VII) by appellate court orders of December 4, 1987 and April 7, 1988 denying petitioner's motion for summary reversal were violative of his rights under the first and fifth and fourteenth amendments to the United States Constitution, 28 U.S.C. §1343; 42 U.S.C. §§ 1981, 1983, 1985(3), and 2000e et seq.; 9 U.S.C. § 4 (counts 1, 2, New 3, and 7 of his complaint).

Whether the trial court's actions at trial resulted in prejudicial improprieties against the Petitioner under allegations of bias of judge.

LIST OF ALL PARTIES

The proper parties in this lawsuit, Civil Action No. 84-2517 are the various defendants, individually and in thier official capacity, and pro se plaintiff, BRAHMA S. KAUSHIVA, DR.:

1. Plaintiff
   BRAHMA S. KAUSHIVA, DR.
2. Defendant
   BOARD OF TRUSTEES OF THE University of the District of Columbia
3. Defendant
   UNIVERSITY OF THE DISTRICT OF COLUMBIA
4. Defendant Indiv./Member of Board
   ROBERT L. GREEN, DR.
5. Defendant Indiv./Member of Board
   LARRY ADAMS, MR.
6. Defendant Indiv./Member of Board
   ELIZABETH ABRAMOWITZ, DR.
7. Defendant Indiv./Member of Board
   DONALD BROWN, MR.
8. Defendant Indiv./Member of Board
   RONALD H. BROWN, MR.
9. Defendant Indiv./Member of Board
   LUCY M. COHEN
10. Defendant Indiv./Member OF Board
    PETER BENJAMIN EDELMAN
11. Defendant Indiv./Member of Board
    DANIEL I. FIVEL, DR.
12. Defendant Indiv./Member of Board
    F.D.R. FOX, MR.

13. Defendant Indiv./Member of Board
THOMAS A. HART, MR.

14. Defendant Indiv./Member of Board
VIRGINIA HOWARD, DR.

15. Defendant Indiv./Member of Board
CONCHA JOHNSON, MS.

16. Defendant Indiv./Member of Board
N.JOYCE PAYNE, DR.

17. Defendant Indiv./Member of Board
HERBERT O. REID, DR.

18. Defendant Indiv./Member of Board
TERRY B. THOMAS, MR.

19. Defendant Indiv./Member of Board
JOSEPH WEBB, MR.

20. Defendant Indiv./Member of Board
LORRAINE WHITLOCK, MRS.

21. Defendant Indiv./Member of Board
EWAUGH F. FIELDS, DR.

22. Defendant Indiv./Dean, College of Life Sciences
ANNYE C. BUCK, DR.

23. Defendant Indiv./Associate Dean College of Life Sciences
WILLIAM E. HYMAN, DR.

24. Defendant Indiv./Chairman, Dept. of Environmental Science
ALBERT JOSE JONES, DR.

25. Defendant Indiv./Coordinator of Integrated Science
JAMES R. PREER, DR.

26. Defendant Indiv./Chairman, Dept. of Earth and Life Sciences
VICTORIA C. GUERRERO, DR.

27. Defendant Indiv./Secretary,Dept. ELS
PATTY M. WHITTAKER, MRS.

28. Defendant — Indiv./Secretary Department of Mortuary Science
JANET B. COUNTS, MRS.

29. Defendant
FACULTY ASSOCIATION OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA

30. Defendant — c/o Mr. Clifton D. Smith
DISTRICT OF COLUMBIA

31. Defendant — Indiv./Mayor-Commissioner of the District of Columbia
MARION P. BARRY, MR.

32. Defendant — Indiv./Interim President, UDC
CLAUDE A. FORD, MR.

33. Defendant — Indiv./Interim Provost, UDC
SAMUEL SULLIVAN, DR.

34. Defendant — Indiv./Assistant Dean, College of Life Sciences
JEAN GRANT, DR.

35. Defendant — Indiv./Chairman, Dept. of Biology
MILDRED W. SCOTT, DR.

36. Defendant — Indiv./Coordinator of Fund.Hum. Anat. & Phys. Courses
CECIL RAMSUNDER, DR.

TABLE OF AUTHORITIES

Page

Cases:

Avco Corp. v. Aero Lodge No. 735, 390 U.S. 557, 561-62 (1968) 21

Berio v. EEOC, 18 EPD ¶8847 (D.D.C.1979) 35

Bradington v. International Business Machine Corp., 360 F. Supp. 845 (D.Md. 1973) 35

Burch v Carmody, 377 F. Supp. 1157 . . 42

Cariddi v. Kansas City Chiefs Football Club, 568 F. 2d 87, 88 (8th Cir. 1977) 37

Cooper v. Baldwin-Bellmore Federal Sav. & Loan Assoc., 390 F. Supp. 874 (1975 DC N.Y.) 21

3 Corbin On Contracts §554, pp. 222-27 (1960) 44

Desha County v Crocker First Nat.Bank 72 F. 2d 359 (8th Cir. 1934) . . . 23

Cuddy v. Carmen, 694 F. 2d853, 859 (D.C. Cir. 1982 35

Dewey v. Clark, (CA DC 1950 180 F. 2d 766, 772 25

Dolence v. Flynn, 628 F. 2d 1280 910th Cir 1980) 42

Firefighters Institute for Racial Equality v. St Louis, 549 F. 2d 506, 514-15 (8th Cir 1977) 36

General Outdoor Advertising Co. v. Williams, 12 F. 2d 773, cert den 273 U.S. 721 71 L Ed 858, 47 S. Ct. 111 (1926) 23

Gordon v. Gilfoil, 99 U.S. 25 L Ed 383 (1879) 23

Greene v. Howard University, 412 F. 2d 1128, 1132 (D.C. Cir. 1969) 39

Griggs v. Duke Power Co., 401 U.S. 424 36, 41

Insurance Co. v. Brune's Assignee, 96 U.S. 588, 24 L Ed 737 (1878) 23

Johnson v. Wolff's Clothiers, Inc. 663 F. 2d 800 (8th Cir.) 43

Jones v. Metropolitan Hospital & Health Centers, 88 FRD 341 (E.D. Mich. (1981) 43

Keeling v. State of Maryland, 285 Md. 579, 420 A. 2d 261 (1980) 28

Liljeberg v. Health Service Acquisition Corp., No. 85-957 (U.S. Supreme Court 1988) 52

Loe v. Heckler, No. 84-5369, July 26, 1985 37

Martin v. Wheatley, 62 F. Supp. 104 D.C. Ark. 1945) 24

Mazaleski v. Treusdell, 562 F. 2d 701, 719 (D.C. Cir. 1977) 31

McDonnell Douglas Corp. v. Green, 411 U.S. 792 41

McKenna v. Weinberger, 720 F. 2d 783, 790 (D.C. Cir. 1984) 37

Meritor Savings Bank, FSB v. Vinson, et al No. 84-1979 (June 19, 1986) 36

Milhouse v. Levi, 548 F. 2d 357 (D.C. 1976) 22

Minor v. Washington Terminal (CA DC 1950) 180 F. 2d 10,13 25

Minor v. Califano, 452 F. Supp. 36 43 (D.D.C. 1978) 36

Muller v. U.S. steel Corp., 509 F. 2d 923 (10th Cir. cert denied, 423 U.S. 825 (1975) 35

Napoleon v. Xerox Corporation, 656 F. Supp. 1120 (1987) 42

Nyphus v. Travel Management Corp., (D.D.C. 1972) 25

Papnicolas v. Group Hospitalization, Inc., 434 A. 2d 403, 40 (D.C. 1981) 44

Paroczay v. Hodgees, 297 F. 2d 439 (D.D.C. 1961) 28

Pierce Petroleum Corp. v. Emire Gas & Fuel Co., 17 F. 2d 758 (1927) 24

Powell v. Pennsylvania Housing Finance Agency, 563 F. Supp. 419 42

Premier Malt Product Co. v. G.A. Ackerman Printing Co., 24 F. 2d 89 (7th Cir. 1927) 24

Racial Equality v. St Louis, 549 F. 2d 506, 514-15 (8th Cir. 1977) 36

Reynolds Metal Co. v. Rumsfield, (1976, DC Va) 417 F. Supp. 365 37

Rich v. Sills, 130 A 2d 920, 922 (D.C. 1957) 44

Rogers v. Mc Call, 488 F. Supp. 689 (D.D.C. 1980) 37

Sartor v. Arkansas Natural Gas Corp., 321 U.S. 620, 627, 628-29 (1944) 28

Sawyer v. Russo, 19 EPD ¶8996 (D.D.C. 1979) 36

Shaare Tefila Congregation v. Cobb,U.S. Supreme Court N. 85-2156 (1987) 43

St. Francis College v. Al-Khazraji, U.S. Supreme Court No. 85-2169 (1987) 43

Sweeney v. Board of Trustees of Keene State College, 569 F. 2d 169 (ist Cir. 1978) 34

Thompson v. International Association of Mechinists and Aerospace Workers, 380 F. Supp. 662 (D.D.C. 1984) 26, 27

United Mine Workers v. Gibbs, 383 U.S. 715, 166 Ed 218, 86 S. Ct. 1130, 61 25

United States v. Diebold, Inc., 369 U.S. 654, 655 (1972) 25

Vica v. Sipes, 386, U.S. 171, 185-6,(1967) 21

Watson v. Fortworth Bank & Trust, 798 F. 2d 791 (1986) 35, 42

William v. Crabb, 117 F. 2d 193 cert den 187 U.S. 645, 47 L Ed 347 23 S. Ct. 845 (7th Cir. 1902) 23

4 Williston On Contracts §616 at 660-62 (3d ed. 1961) 44

Wilson v. Associated Corp., 74 F. 2d 896, cert den 296 U.S. 580 80 L Ed 410, 56 S. Ct. 90 (1935) 24

1901 Wyoming Avenue Corporative Ass'n v. Lee 345 A. 2d 456, 461 n. 8 (D.C. 1975) citing Rich v. Sills, 130 A. 2d 920, 922 (D.C. 1957) 44

Constitution and Statutes:

§ 1981 5
§ 1983 5
§ 1985(3) 5

Title VI 6
Title VII 6

Age Discrimination Employment Act of 1975 7

Constitution of the United States
First Amendment 8
Fifth Amendment 8
Fourteenth Amendment 8

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW . . .	i
LIST OF ALL PARTIES	ii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	2
JURISDICTION	3
STATUTORY PROVISIONS INVOKED	5
CONSTITUTIONAL PROVISIONS INVOKED .	8
STATEMENT OF THE CASE	9
ARGUMENT	18
CONCLUSION	52

APPENDICES

A.	Court of Appeals Order of December 4, 1987 . . . . Per Curiam	A-1-2
B.	Court of Appeals Order of April 7, 1988 . . . . . Per Curiam	B-1-2
C.	Denial of Petition for Rehearing dated June 8, 1988	C-1
D.	Denial of Petition for Rehearing en banc of June 8, 1988	D-1
E.	Trial Court's Order of May 9, 1986 (summary judgment in favor of the Faculty Association	E-1-6

APPENDICES (-continued) Page

F. Trial Court's Order of July 10, 1987 . . . . . F-1-26

G. Trial Court's Order of March 22, 1985 . . . . . G-1-15

H. Trial Court's Order of April 18, 1985 . . . . . H-1-3

I. Trial Court's Order of August 29, 1985 . . . . I-1-2

J. Magistrate's Report and Recommendation of August 6, 1985 . . . . . J-1-5

K. D.C. Superior Court's Order of July 6, 1984. . K-1-2

L. U.S. Court of Appeals Order of May 13, 1986. . L-i-2
Per Curiam

M. Oral Trial Court's Order of March 30, 1987 dismissing jury. M-1-7

N. Pretrial Proceedings in Civil Action No. 84-2517 N-1

O. Complaint of Constitutional deprivation, employment discrimination and retaliation. Cause of Action under C.A. No. 84-2517 . . . . O-1-31

P. Determination EEOC Charge Number 032-52127-6 dated February 24, 1978 . . . P-1-2

APPENDICES (-continued) Page

Q. Notice of Right to Sue, EEOC Charge Against Washington Technical Institute, et al. No. 032521276 dated April 17, 1985 . Q-1-2

R. Bias Seen in Firing of Indian at WTI Washington Star, July 1976 . . . . . R-1-3

S. Trial Court's Order of September 22, 1986. S-1-4

T. Trial Court's Order of October 24, 1986. . T-1-5

U. Chief Judge Aubrey E. Robinson's Letter of October 16, 1987 U-1

V. District of Columbia Commission on Judicial Disabilities and Tenure Chairperson William W. Taylor's Letter of March 21, 1983 . . . . V-1-2

W. Subpoenas Ducus Tecum 1. Dr. Elvira Paz 2. Dr. Yuen S. Lee (with Receipts (Witness and Mileage Fees) Defendants: Drs. 1. James Preer, 2. Albert Jose' Jones, 3. Victoria C. Guerrero, 4. Samuel Sullivan, 5. William E. Hyman W-1-12

Certificate of Service PAGE 53

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

BRAHMA S. KAUSHIVA,
Petitioner,

v.

BOARD OF TRUSTEES OF
THE UNIVERSITY OF THE
DISTRICT OF COLUMBIA, et al.,
Respondent.

PETITION FOR WRIT OF
CERTIORARI TO THE UNITED STATES
Court of Appeals for the District
of Columbia Circuit

The Petitioner, Pro se, Dr. Brahma S. Kaushiva respectfully prays that a Writ of Certiorari issue to review the Per Curiam orders of December 4, 1987 and April 7, 1988 denying petitioner's motion for summary reversal, or in the Alternative, for Expedited Consideration of the United States District

Court of Appeals for the District of Columbia, the federal court of the last resort.

OPINIONS BELOW

The United States District Court for the District of Columbia, trial court, granted a summary judgment in favor of the Faculty Association of the University of the District of Columbia on May 9, 1986 and denied petitioner's motion for partial summary judgment.

On July 10, 1987, the trial court entered judgment for the defendants Board of Trustees, et al

Petitioner-plaintiff filed his motion for summary reversal which was denied and the Faculty Association's motion for summary affirmance was granted for the reasons stated in the district court's order of May 9, 1986 by its order of December 4, 1987. The appellate court on its own motion further ordered that appellant show cause why the district court's orders of March 22, 1985 and July 10, 1987 should not be summarily affirmed for

the reasons stated therein.

On April 7, 1988 the appellate court in a Per Curiam discharged the show cause order issued on December 4, 1987 and further ordered that the district court's orders filed March 22, 1985 and July 10, 1987 be summarily affirmed for the reasons stated therein.

The petitioner filed his Petition for Rehearing on May 7/9, 1988 which was denied on June 8, 1988 in a Per Curiam order.

JURISDICTION

This is an action for declaratory relief, injunctive relief and damages to redress the deprivation of rights secured to the petitioner under the provisions of the equal protection clauses of the First Amendment, Fifth Amendment and the Fourteenth Amendment to the Constitution of the United States, Title VII of the Civil Rights Act of 1964, as amended in 1972, 28 U.S.C. §§ 1331, 1332, 1337, 1343 and related statute 9 U.S.C. § 4, 42 U.S.C. § 1981, 1983, 1985(3), and Federal

Statute 1866.[1] Petitioner was awarded a jury trial in this employment discrimination (age and national origin); reprisal, retaliation and harassment in violation of civil rights; and breach of contract.[2]

---

[1] "To clarify what remains of plaintiff's complaint, allegations of violations of his rights under the first and fourteenth amendments to the United States Constitution, 28 U.S.C. § 1343: 42 U.S.C. §§ 1981, 1983, 1985 (3), and 2000e et seq.; 9 U.S.C. 4 (counts 1, 2, and 7 of his complaint) are still viable." Court Order and Memorandum of March 22, 1985 at 8. Summarily affirmed by appellate court order of April 7, 1988.

"ORDERED that insofar as plaintiff attempts to state a cause of action for violation of his rights to due process under the fifth amendment to the United States Constitution as a result of "constructive retaliatory discharge," plaintiff's motion for leave to amend complaint by adding new count 3 is GRANTED;" District Court Order of April 18, 1985 at 1.

[2] Pretrial Proceedings of March 11, 1987.

STATUTORY PROVISIONS INVOKED

42 U.S. Code § 1981:

> All persons within the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens.

42 U.S. Code § 1983:

> Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding in redress.

42 U.S. Code § 1985(3):

> If two or more persons in any State or Territory conspire for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of presenting or hindering the authorities of any State or Territory from giving or securing to all persons . . . the equal protection of the laws . . . if one or more persons engaged in such a conspiracy do, or cause to

be done, any act in furtherance of such conspiracy, whereby another is injured in his person or property or is deprived of having exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action of recovery of damages caused by such injury or deprivation against any one or more of such conspirators.

42 U.S. Code § 2000d. Title VI:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Section 601, 602, Civil Rights Act of 1964 (e) Intimidatory or retaliatory acts prohibited:

No recipiant or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part.

42 U.S. Code § 2000e, et seq. Title VII:

Section 703 (a) (1) (2):

It shall be unlawful employment

practice for an employer --

(1) to fail or refuse to hire or to discharge any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Age Discrimination Employment Act of 1975:

No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance, applicable for persons of 40-70 age.

CONSTITUTIONAL PROVISIONS INVOKED

First Amendment, in pertinent part:

> 1. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof: or abridging the freedom of speech, or of the press; or the right of the people to assemble, and to petition the Government for a redress of grievances.

Fifth Amendment, in pertinent part:

> No person shall . . . , nor be deprived of life, liberty, or property, without due process of law; . . . .

Fourteenth Amendment, in pertinent part:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Pro se plaintiff filed a complaint of deprivation of constitutionally protected "property" and "liberty" interests without due process of law; and employment discrimination (age and national origin); reprisal, retaliation and harassment in violation of Civil Rights; and breach of contract and collective bargaining agreement; jury trial on August 15, 1984.

In this suit, pro se plaintiff alleges disparate treatment; pattern and practice discrimination; reprisal, retaliation, discriminatory harassment; breach of contract; violaof the collective bargaining agreement; violation of his rights to arbitration of his grievances; commission of and conspiracy to commit various torts; violation of his rights to due process under the United States Constitution; and finally breach of the duty of fair representation by the UDC Faculty Association.

Petitioner, pro se, is currently a pro-

fessor in the Department of Biology of the College of Life Sciences at the University of the District of Columbia ("UDC").

Plaintiff, who is an Asian Indian, originally filed a complaint of discrimination and harassment on the basis of national origin and age on June 10, 1975. Despite a probable cause determination by the D.C. Office of Human Rights that plaintiff's national origin was a factor in the decision not to renew plaintiff's contract, plaintiff was terminated effective June 15, 1976.

D.C. OHR overruled its own probable cause determination and EEOC also concluded that there is no reasonable cause to believe that the charge no. 032-52127-6, Brahma Kaushiva v. Washington Technical Institute a.k.a. University of the District of Columbia, is true.(February 24, 1978 EEOC Determination)

EEOC concluded its processing and advised the Charging Party to obtain the NOTICE OF RIGHT TO SUE from the U.S. Department of

Justice in case he wishes to pursue this matter further by filing a private action in Federal District Court. The Notice of Right to Sue was issued by the U.S. Department of Justice on April 17, 1985

But on March 14, 1980, in an entirely separate labor related arbitration it was determined by an arbitration panel that the decision not to renew plaintiff's contract in 1976 was "improper," and that he should be reinstated with back pay, seniority, and benefits. That arbitration award was confirmed by the D.C. Superior Court in Kaushiva v. Local 2142, No. 5792-77, in Orders dated July 18, 1980, and September 15, 1980. Petitioner returned to UDC effective April 14, 1980.

Since that time, petitioner has been subjected to employment conditions which are totally intolerable so that his reinstatement is a "constructive retaliatory discharge" and denial of due process under law.

Petitioner has challenged UDC's

compliance with the reinstatement orders on a number of occasions, but discrimination and retaliation has continued unabated and UDC has made employment conditions for the petitioner intolerable so that his reinstatement is a "constructive retaliatory discharge".

Finally, on August 20, 1982, an arbitrator again ruled in favor of the petitioner.[3/]

On April 3, 1984, petitioner had to file another complaint in D.C. Superior Court at the instance of Judge Goodrich who ruled that matters of harassment and tort should be dealt with in the new suit (Kaushiva v. University of the District of Columbia, No. 4373-84) and all arbitral aspects should fall under the original suit (Kaushiva v. Local 2142, 5792-77).

3/ "Grievant, Dr. Brahma S. Kaushiva is entitled to reinstatement in the Department of Earth and Life Sciences at the University of the District of Columbia, including all rights and benefits to which he would have been entitled had he not been terminated by the Washington Technical Institute in their Department of Fish, Game and Wildlife." Aronin Award at 72.

C.A. No. 4373-84 contains several allegations virtually identical to those raised in the federal complaint and Judge Murphy of Superior Court ordered further proceedings in the case stayed pending the outcome of a current arbitration of plaintiff's grievances, although, in fact, no arbitration was in progress at that time. Judge Flannery dismissed counts 3, 4, 5, 6, 8, 9, 10, and 11 of plaintiff's complaint for reasons of efficient judicial administration alone, as two suits on the same causes of action should not be maintained in the Superior Court and the United States District Court. The Court ruled that while defendants are not entitled to abatement of plaintiff's duplicative federal suit as a matter of right, the court has the discretion to dismiss the identical counts. The court denied plaintiff's requests, even after he had "withdrawn" the so-called largely duplicative suit so that the federal court can hear the non-federal claims as pendent claims in concurrent jurisdiction.

In the Court Order of March 22, 1985, Counts 1, 2, New 3, and 7 were retained. Now this order has been summarily affirmed by the appellate court's order of April 7, 1988.

Court Order of May 9, 1986 granted summary judgment to the UDC Faculty Association and denied plaintiff's motion for partial summary judgment. By appellate court order of April 7, 1988, the summary judgment order has also been summarily affirmed.

The summary affirmance of Court Order of April 7, 1988 implies that petitioner has to start all over again and he must return jacket C.A. No. 4373-84 to active docket status and compel arbitration to resolve retaliatory adverse actions taken against him on October 19, 1981 and October 12, 1983.

Dean Annye C. Buck was mindset to get rid of the petitioner and threatened the petitioner several times by acts of harassment:

> "I AM GOING TO GET HIM IF IT TAKES THE REST OF MY LIFE." Bates, Tr. January 24, 1983 at 131; Trial Tr. March 23, 1987 at 68; April 7, 1987, De Benne Esse Deposition of Dr. Buck.

Dean Buck and Associate Dean Hyman conspired to initiate several adverse termination proceedings against the petitioner and when their attempts failed, they eliminated his department under a Reduction-of-Force plan.

On January 1, 1985, petitioner was RIFed and involuntarily transferred to the Biology Department, whereas his juniors were transferred to the Environmental Science Department. Also the RIF for others started on July 15, 1985.

The trial began on March 23, 1987. Although it was a jury trial under the law of the case, Judge Revercomb conducted it as a bench trial and failed to give jury instructions.

On March 30, 1987, Judge Revercomb dismissed the jury and labeled "Count 3 as 'constructive retaliatory discharge', asserting that the R.I.F., or the elimination of his department, the finding of him as "AWOL". and the suspension of him without pay for 10 weeks

violated his constitutional rights."

However, while dismissing the count,it "ruled that the plaintiff has made what we call a prima facie case as to the national origin and discrimination through retaliation has been made." Trial Transcript, March 30, 1987 at 3 . (Excerpt).

On July 10, 1987, Judge Revercomb rendered his judgment in favor of all the defendants, which has been summarily affirmed per curiam dated April 7, 1988.

Intriguingly, the complaint suffered from a series of judge recusals, unbeknownest to the pro se petitioner. The initial complaint was assigned to Judge Joyce Hens Green randomly. She recused herself on December 10, 1984. On December 14, 1984, Judge Parker also recused himself to whom the case was sent on recusation of Judge Green. The case got in the court of senior Judge Flannery. Generally, in cases of judge recusal parties are made aware of the reasons for recusal and the new judge is screen-

ed for any potential recusation.

On January 6, 1986 Judge Flannery transferred the case to "the next to the newly appointed" Judge Revercomb (withholding the transfer from November 21, 1985 to January 6, 1986 in wait for Judge Revercomb's arrival from the D.C. Superior Court where the Kaushiva matter has gained wide publicity and interest).

Ever since the transfer of the case to Judge Revercomb on January 6, 1986, petitioner suffered irreversible damage due to his biased rulings against and due to predisposition to terminate the litigation. Judge Revercomb refused to recuse from the case and was adamant to rule against the petitioner. Judge Revercomb denied all motions for recusal and Court Orders of May 9, 1986 and July 10, are the results of bias and partiality of Judge Revercomb.

The judgments were rendered in the face of incomplete discovery, quashing of subpoenas, and withholding trial record from the petitioner. Petitioner's motions for reconsideration, clarification and instruction have been systematically denied.

ARGUMENT

THE SUCCESSFUL LEGAL DEFENSE
OF ONE EDUCATOR IS A TRIUMPH
OF LIBERTY FOR EVERY EDUCATOR.

-- Michael D. Simpson

This durable controversy is unique and raises major questions of constitutional law governing the working conditions of the intellectual workers. If the Writ is granted it will be precedential and beneficial as it involves broad and significant public policy legal issues. If the Supreme Court finds in favor of the petitioner, certain significant issues within the total field of Teacher Rights will be clarified to resolve conflicts between different courts regarding Teacher Rights under collective bargaining agreements which incorporate procedures used in private sector and also clarify the "property" and "liberty" interests of teachers in the District of Columbia pertaining to the terms of their employment conditions or school policies in connection with Civil Rights.

Petitioner's complaint is framed in the district court orders of March 22, 1985: April 18, 1985; and August 29, 1985 (confirming Magistrate Dwyer's Report and Recommendation of August 6, 1985 in full).

COUNTS:

Count 1 alleges disparate treatment and pattern and practice of discrimination in violation of Title VII and 42 U.S.C. §§ 1981 and 1983.

Count 2 alleges reprisal, retaliation, and harassment in violation of Title VII 42 U.S.C. § 1985(3); Title VI (Sec. 601, 602) (42 U.S.C. 2000d-1)

Count 3 alleges contractual violations and denial of due process under the Fifth Amendment to the United States Constitution as a result of "constructive retaliatory discharge". (Merging of complaint's initial counts 5 and 10).

Count 7 alleges "violation of Arbitration Act", 9 U.S.C. § 4.

In dismissing other counts[4/]

4/ Counts 3, 4, 5, and 6 are breach of contract; interference with existing and future commercial relationships; and violation of the collective bargaining agreement.

Count 8 and 9 are severe emotional distress; and conspiracy to commit a "personal tort".

wholesale appears to constitute an abuse of discretion. Clearly, the court exceeded the bounds of moderation in dismissing summarily 8 counts out of 11, particularly in a pro se litigation. Landis v. North American Co., 299 U.S. 248, 57 S. Ct. 163.

I
Court Order of March 22, 1985
Dismissal and Abatement

A. DISMISSAL OF COUNT 11 PREJUDICED A FAIR ADJUDICATION OF COUNTS 2 AND 7

The scope and role of the Faculty Association vis-a-vis Counts 2 and 7 is dealt with in Magistrate Dwyer's Report and Recommendation. (J-1 to 5)

Count 11 alleges the Association's breach of its duty of fair representation and breach of the collective bargaining agreement under 28 U.S.C. § 1337, which provides a basis for

---

4 / -continued

Count 10 is a violation of plaintiff's rights to due process under the Constitution.

Count 11 is breach of duty of fair representation.

exercise of federal jurisdiction. Avco Corp. v. Aero Lodge No. 735, 390 U.S. 557, 561-62 (1968); Vica v. Sipes, 386, U.S. 171, 185-6 (1967). Also see Reynolds Metal Co. v. Rumsfield (1976, DC Va) 417 F. Supp. 365. Cooper v. Baldwin-Bellmore Federal Sa. Loan Assoc., (1975 DC N.Y.) 390 F. Supp. 874.

The facts alleged in Counts 2 and 7 of the action at bar are intimately intertwined with Count 11. Further, Counts 2 and 7 were not duplicative of any counts alleged to be pending in D.C. Superior Court. (J-2 to J-5). Thus, the dismissal of Count 11 prejudiced the petitioner as an integral and logical component of his claim was excluded and effectively denied him an adjudication of Count 11 on its merits. Also see appellate court's order of May 13, 1986 which states:

> "As the district court observed, Count 7 of appellant's complaint may be construed to contain several claims directed against the Faculty Association that are essentially similar to the allegations in Count 11. See Kaushiva v. Board of Trustees, C.A. No. 84-2517 (D.D.C. August 29, 1986) (Magistrate's Report and Recommendation)"

B. COURT ERRONEOUSLY DECLINED TO EXERCISE IT"S PENDENT JURISDICTION OVER COUNTS 3, 4, 5, 6, 8, 9, 10 and 11

Since Counts 1, 2, "New" 3 and 7 of the Complaint provided substantial federal questions and were inextricably linked with the factual allegations contained in the dismissed counts, it was reasonable and necessary to join them with the viable federal counts. It was an error for the court to not have retained jurisdiction after balancing the equities involved. It is especially true since the determinative facts -- the truth of the statements regarding hiring, adverse actione, terminations, summer contracts, sabbatical leave, AWOLs, suspension without pay, involuntary transfer, bumping rights, RIF, and Elimination of the Department of Earth and Life Sciences -- are issues in both cases and a decision on merits in one would be "res judicata" in the other. See, Milhouse v. Levi, 548 F. 2d 357 (D.C. 1976)

The district court's jurisdiction over federal claims allows it to exercise pendent jurisdiction

over other state or or contractua; claims which are derived from a common nucleus of operative facts. United Mine Workers v. Gibbs, 383 U.S. 715, 16 L Ed 218, 86 S. Ct. 1130, 61.

Furthermore, the pendency of a prior suit in state court does not prevent maintenance of a subsequent suit in federal court and the fact that there was a pending suit in state court between the same parties seeking the same relief is not a good defense to suit in federal court. Insurance Co. v. Brune's Assignee, 96 U.S. 588, 24 L Ed 737 (1878); Gordon v. Gilfoil, 99 U.S. 25 L Ed 383 (1879); General Outdoor Advertising Co. v. Williams, 12 F. 2d 773, cert den 273 U.S. 721, 71 L Ed 858, 47 S. Ct. 111 (1926); Desha County v. Crocker First Nat. Bank, 72 F. 2d 359 (8th Cir. 1934).

Rights and remedies, legal or equitable, provided by statutes of states to be pursued in state courts may be enforced and administered in federal courts. Williams v. Crabb,

117 F. 193, cert den 187 U.S. 645, 47 L Ed 347, 23 S. Ct. 845 (7th Cir. 1902); Pierce Petroleum Corp. v. Empire Gas & Fuel Co., 17 F. 2d 758 (1927).

Pendency in state court of an action concerning the same matter cannot be pleaded in bar or abatement of action in federal court. Premier Malt Product Co. v. G.A. Ackerman Printing Co., 24 F. 2d 89 (7th Cir. 1927); Wilson v. Associated Corp., 74 F. 2d 896, cert den 296 U.S. 580, 80 L Ed 56 S. Ct. 90 (1935). See also Martin v. Whitley, 62 F. Supp. 104 (D.C. Ark. 1945).

For the foregoing cogent reasons, granting abatement and dismissal in part was improper and abuse of discretion.

II

Court Order of May 9, 1986
Summary Judgment

Judge Revercomb granted summary judgment in favor of the Faculty Association and denied petitioner's motion for partial summary judgment by court order of May 9, 1986.

A. THE COURT'S ORDER OF MAY 9, 1986 ERRONEOUSLY GRANTED SUMMARY JUDGMENT TO THE FACULTY ASSOCIATION

In order to support summary judgment the situation must justify a directed verdict insofar as the facts are concerned. Dewey v. Clark (CA DC 1950) 180 F. 2d 776, 772; Minor v. Washington Terminal (CA DC 1950) 180 F. 2d 10, 13. And, as in United States v. Diebold, Inc., 369 U.S.654, 655 (1972) on summary judgment, the inferences to be drawn from underlying facts contained in affidavits, exhibits and depostions must be viewed in the light most favorable to the party opposing the motion. A trial is absolutely necessary where there is a genuine issue as to any material fact. Nyhus v. Travel Management Corp., (D.C.C. 1972).

The faculty Association failedto take any of the plaintiff's grievances to arbitration or court, including reprimand, AWOL, suspension without pay, involuntary transfer, bumping rights, RIF and elimination of dep-

artment, thus, acting as a conspirator with Management to deprive plaintiff of his constitutional and civil rights actinable under 42 U.S.C. § 1985(3). See, Thompson, Infra. (at 27)

For example, the Faculty Association acted in collusion with the University in not taking to arbitration the pending grievance concerning appellant transfer/bumping rights which resulted in his "constructive retaliatory discharge" Count 3. See,August 30, 1985 Letterfrom Dr. George K. Zachariah addressed to Dr. Kaushiva:

> "This is to inform you that after discussion and consideration, Faculty Association has decided not to take to arbitration the pending grievance concerning your transfer/ bumping rights"

(Also see, Transcript I, Kaushiva, pp. 20-25; 28-33; pp. 22-58 RIF; pp 42-56 Bumping Rights and Transfer; pp. 14-17

Conspiracy; pp. 26-27 Retaliation.Deposition of Kaushiva taken by the Faculty Association on November 25, 1985, and December 4, 1985). (Also see, relevant portions in the Depositon of Kaushiva taken by the University on January 14, 1986).

Summary judgment is seldom proper in a case involving a claim and allegation of conspiracy.[5] The Faculty Association deprived appellant of his contractual, constitutional and civil rights and indulged in discriminatory treatment.[6]

---

5 / Additionally, the Association may have acted as a conspirator so as to deprive plaintiff of constitutional and civil rights actionable under 42 U.S.C. § 1985(3). See, Thompson v. International Association of Machinists and Aerospace Workers, 580 F. Supp. 662 (D.D.C. 1984)," Magistrate's Report and Recommendation of August 6, 1985. (J-4)

6 / Faculty Association has accorded discriminatory treatment to the petitioner in taking the grievances to arbitration, reimbursing expenses incurred in processing grievances.Association took other RIF cases to arbitration and courts and provided legal and financial assistance to other members. Cf: Bowers Arbitration, February 2, 1982 for 1982 RIF.

If there is any issue of fact undisposed of, summary judgment cannot be granted. Teller v. Canton R.R., 212 Md. 423 (1957). Thus, summary judgment is proper only where there is no genuine dispute as to any material fact and when the moving party is entitled to judgment as a matter of law. The record in the case reflects that there exist a bona fide and genuine dispute as to the material facts and there is no discussion in the said order that summary judgment can be rendered as a matter of law as no genuine dispute exists as to the material facts. See, Keeling v. State of Maryland, 285, Md. 579, 420 A. 2d 261 (1980); Paroczay v. Hodges, 297 F. 2d 439 (D.D.C. 1961); Sartor v. Arkansas Natural Gas Corp., 321 U.S. 620, 627, 628-29 (1944).

7/ "The scope of the Faculty Association's responsibility to and the assistance it rendered plaintiff require further elucidation through discovery, pretrial motions and, possibly, proof at trial." Magistrate's Report and Recommendation of August 6, 1985 at J-4.

It is contrary to the principles of collective bargaining agreement to say that "the Association has no agreement to arbitrate precluding plaintiff from any relief under this Act". The Master Agreement provides. Article IX, Section E. ARBITRATION, Sub-Section 6 at p. 10:

> "The orderly process hereinafter set will be the sole method used for the resolution of all complaints and grievances." Emphasis added.

The Faculty Association is the exclusive bargaining agent and is bound by the collective bargaining agreement to accord the petitioner certain procedural safeguards. Its failure to do so denied him due process of law. The collective bargaining agreement flatly declares that the remedies it provides are "the sole method[s] for the resolution of all complaints and grievances such as the one before us". Court Order of June 28, 1979, Kaushiva v. UDC, Appeal No. 78-1942 (C.A. No. 77-2176)

B. THE COURT ORDER OF MAY 9, 1986 ERRONEOUSLY DENIED PARTIAL SUMMARY JUDGMENT TO THE PLAINTIFF

The plaintiff's motion for partial summary judgment should have been granted as a matter of law for there are no genuine issues of fact pertaining to provisions in the Master Agreement regarding AWOL, Suspension withot pay, involuntary transfer, bumping rights, adverse actions and RIF. The defendants and the said order does not specify what are the disputed facts and why the partial summary judgment is precluded and cannot be granted as a matter of law. Lack of judicial analysis and the sketchy nature of the said order and the perfunctory disposal of summary judgment motions only reflect a predisposition to terminate the litigation on the part of Judge Revercomb. [8]

---

[8] See, Magistrate Dwyer's statement that Judge Revercomb requested in a conference with her privately that a schedule be set up "looking towards terminating this litigation". Transcript of motions hearing before Magistrate Dwyer held on February 11, 1986, p. 2.

The Court rendered summary judgment in favor of the Faculty Association in great haste and restricted the petitioner unduly in presenting his side, particularly in view of the complex nature of the case:

THE COURT:

> MS BERGMAN. I WANT TO HEAR THE TWO MOTIONS THAT ARE PENDING BEFORE ME. FIRST, MS. BERGMAN, ON BEHALF OF THE ASSOCIATION, FOR SUMMARY JUDGMENT, AND THEN I WANT TO HEAR DR. KAUSHIVA, ALSO, ON MOTION FOR PARTIAL SUMMARY JUDGMENT. FOLLOWING THAT
>
> I'D LIKE THE PLAINTIFF TO REPLY TO THE DEFENDANT ASSOCIATION'S MOTION BEFORE HE PRESENTS HIS OWN MOTION. I AM GOING HAVE TO RESTRICT YOU AS TO TIME. THE COURTROOM IS OBLIGATED. AND, ALSO I THINK THAT I'D LIKE YOU -- I'D LIKE TO GO HALF HOUR ON EACH MOTION. SO YOU HAVE FIFTEEN MINUTES.
>
> Transcript of May 6, 1986 hearing at p. 2 and p. 3

In sum, the Faculty Association was not entitled to summary judgment on the record of the case and it should have been denied as it was unsupported by Affidavits or facts were admitted by plaintiff to be true. Mazaleski v. Treusdell, 562 F. 2d 701 (D.C. Cir. 1977).

C. PARTIAL SUMMARY JUDGMENT FOR THE PLAINTIFF SHOULD HAVE BEEN DEEMED CONCEDED

Defendants, Board of Trustees filed opposition untimely and the court erred in not treating plaintiff's motion for partial summary judgment as conceded since plaintiff filed his motion on March 24, 1986 and the Opposition was filed on May 7, 1986 almost after a lapse of 39 days. No stipulation agreeing to an extension of time was filed by defendants, nor did they move for extension of time. Under Local Rule 108(b) of the United States District Court for the District of Columbia, the Court should deem appellant's motion conceded and an order entered accordingly.

In sum, Judge Revercomb erred egregiously in delivering summary judgments before making a reasonable effort at enquiry to probe for the whole truth and full facts of the case.

Wherefore, the district court's order of May 9, 1986 should be summarily reversed and appellate court's order of December 4, 1987

granting summary affirmance should be vacated for a just and fair adjudication of the appeal.

III

Judgment of July 10, 1987
Discrimination and Retaliation

A. JUDGMENT OF JULY 10, 1987 IS CLEARLY DEFECTIVE AND ERRONEOUS

The jury was impounded on March 23, 1987 to hear all the counts in accordance with the law of the case. But Judge Revercomb denuded all the counts and statutes except Title VII. On March 30, 1987 he cut-off plaintiff from presenting his case in chief. At the same time he dismissed the Count 3 and excused the jury. The trial court erred in asking jury to sit in for one of the causes only,i.e., Count 3. From the very beginning Judge Revercomb was conducting trial as a sort of bench trial and failed to give jury instructions.

After the dismissal of jury on March 30, 1987, the case proceeded non-jury and the bench fully acted as the judge and also as the fact finder.

The judgment of July 10, 1987 was rendered when new material evidence is available which was not taken into account at the time decision was made as facts were not disclosed, documents and witnesses not allowed, subpoenas were quashed, and plaintiff was not allowed to complete his case in chief or permitted to present his case of discrimination.

It is an egregious error on the part of Judge Revercomb to restrict the trial to Title VII and failing to address to the pre-1980 discrimination and retaliation which is the crux of the complaint under § 1981 and § 1983 and the EEOC Charge No. 032-52127-6 dating back to 1974.

In Title VII cases, ordinarily one must rely on inferential, rather than intentional, evidence of discrimination. Sweeney v. Board of Trustees of Keene State College, 569 F. 2d 169 (1st Cir. 1978) vacated and remanded on other grounds, 439 U.S. 24 (1978); Muller

v. U.S. Steel Corp., 509 F. 2d 923 (10th Cir.) cert denied, 423 U.S. 825 (1975). Also see Cuddy v. Carmen, 694 F. 2d 853, 859 (D.C. Cir. 1982). In the most recent Supreme Court decision it is held that disparate impact analysis--under which facially neutral employment practices, adopted without a deliberately discriminatory motive, may in operation be functionally equivalent to illegal intentional discrimination. The said order does not make any statistical analysis and ignores the undisputed facts listed in the Pretrial Proceedings. Watson v. Fortworth Bank and Trust, No. 86-6139 (1988).

To show a violation of Title VII, it is sufficient to show that discrimination played some part in the challenged actions of defendants or its agents; discrimination need not be the dominant contralling factor. Berio v. EEOC, 18 EPD ¶8847 (D.D.C. 1979); Bradington v. International Business Machine Corp., 360 F. Supp. 845 (D.Md. 1973).

Discriminatory purpose must almost be invariably proved by circumstantial evidence.

Sawyer v. Russo, 19 EPD ¶8996 (D.D.C. 1979). This is particularly true with respect to a professional level position like professorship.

Discrimination is broadly defined as any action which impacts and causes the complainant to suffer adversely with respect to the terms, conditions and privileges of his employment not applied to other employees. Minor v. Califano, 452 F. Supp.36 43 (D.D.C. 1978). Griggs v. Duke Power Co., 401 U.S. 424. Judge Revercomb does not make disparate impact analysis in his judgment and solely rely on disparate treatment theory in a superficial manner.

Creation of hostile environment or a working environment charged with ethnic or racial discrimination can be found to be discrimination in violation of Title VII. Meritor Savings Bank, FSB v. Vinson, et al. No. 84-1979 (June 19, 1986); Firefighters Institute for Racial Equality v. St. Louis, 549 F. 2d 506, 514-15 (8th Cir. 1977): Cariddi v. Kansas City

Chiefs Football Club, 568 F. 2d 87,88 (8th Cir. 1977).

A retaliation motive is a thread that runs throughout the fabric of this complaint as has been shown by direct proof and by inference adversely impacting on the petitioner. McKenna v. Weinberger, 720 F. 2d 783, 790 (D.C.Cir. 1984).

Petitioner has proved that the putative reasons articulated by the employer are pretextual which have been rebutted or eliminated, thereby establishing incontrovertibly that its decisions were based on impermissible or discriminatory considerations. Rogers v. Mc Call, 488 F. Supp. 689 (D.D.C. 1980).

The courts are aware of the judicial inclination to construe broadly the complaints of pro se litigants, as well as the legislature's intent to keek "accessible to individuals untrained in negotiating procedural labyrinths" the benefits of Title VII's remedial measures. Loe v. Heckler, No. 84-5369, July 26, 1985.

The glaring faults of this order are BECAUSE OF:

1. Several judge recusals;
2. Judge Shopping; allocation of burden of proof
3. Extrajudicial Bias of Judge;
4. Collusive improprieties of court officials and personal interest of court clerks in the outcome of the case;
5. Cutting-off the plaintiff's case;
6. Dismissing the jury in mid-trial;
7. Dismissing Count 3;
8. Restricting to Title VII and not addressing to pre-1980 discrimination and retaliation; § 1981 and § 1983;
9. Rebuttal evidence ignored;
10. Failure on the part of defendants to respond to rebuttals;
11. Stipulated facts and statistics disregarded;
12. Trial record withheld by court;
13. Subpoenas quashed without attempting to get needed evidence and documents;
14. Finally, UDC's failure to adhere to its own rules and regulations.

It is a well settled law in every

jurisdiction in the country that a public university is bound to follow its own rules and regulations. See, Greene v. Howard University, 412 F. 2d 1124 (D.C.C. 1969); Assaaf v. University of Texas, 399 F. Supp. 1245 (S.D. Tex.1975) aff'd 557 F. 2d 822 (1977).

B. JUDGE REVERCOMB FAILED TO CONSIDER THE STIPULATED FACTS

None of the undisputed facts listed in the Pretrial Proceedings have been relied upon by the trial judge in framing the Findings of Fact and Conclusions of Law.[9] Judge Revercomb would have come to a different and correct decision if he had not omitted the undisputed facts. For instance, Findings of Fact omit to mention age of the plaintiff in a complaint of age discrimination, just to blur the fact that plaintiff is a member of "protected age group"

---

9 / Out of 72 Findings of Fact in the Judgment of July 10, 1987, all are exact verbatim copies of the Defendants' Proposed Findings of Fact and Conclusions of Law except about 12 i2 items, which in themselves are misleading or inaccurate. Similarly, out of 20 Conclusions of Law, all are ditto copies except about 8 items which have ended in erroneous conclusions.

(over 40 and under 70) who needs special protection from employment discrimination.

> "1. Plaintiff is an Asian Indian male faculty member of the University of the District of Columbia, born on July 16, 1919. (Age 68 years) (Stipulation 1)

Similarly, other stipulations which number 98 and which would have demonstrated disparate treatment accorded to the plaintiff have all been omitted.

> "35. Plaintiff Dr. Kaushiva is a faculty member of the University of the District of Columbia with Reserved Interest Status of age 68 and East Indian national origin. (Born July 16, 1919. Stipulation 35.

> "36. Dr. Kaushiva's excellent training and high qualifications, his quarter of centuary of teaching experience at national and international levels, ten years of which have been at the University of the District of Columbia, combine to give him an excellent background for academic leadership. Stipulation 36.

> "49. No other faculty member or professor was suspended without pay for more than 30 days except the plaintiff at CLS. Stipulation 49.

> "50. No other faculty member or professor was denied permission to attend professional meetings at his/her own expense at CLS. Stipulation 50.

Space will not permit to cite many more stipulations which will convince any reasonable person that under both disparate treatment theory (McDonnell Douglas) and the disparate disciplining and impact model (Griggs) the petitioner has been subjected to excrutiating type of pervasive discrimination for a decade. The defendants failed to articulate non-discriminatory reasons for their actions. and the record of the case will show that plaintiff demonstrated causal connection between the filing of his complaints and subsequent adverse actions taken against him. The trial court has attempted to suppress the fundamental aspects of discrimination which has been condoned, practiced, and perpetuated by the employer for a long time. The court order of July 10, 1987 is suffused with errors and omissions and must be vacated.

BIAS SEEN IN FIRING OF INDIAN AT WTI (R-1-3)

C. PETITIONER WAS ENTITLED TO A TRIAL BY JURY ON ALL COUNTS

The petitioner's right to a jury trial has been denied. He is entitled to a jury trial on

all of Counts 1, 2, "New" 3 and 7 on affirmance of March 22, 1985 court order as a matter right since these counts alleged violations under §§ 1981 and 1983 and 1985(3) and the Age Discrimination Employment Act which permit trial by jury as well in cases involving compensatory claims. The specific remedies under Title VII do not preempt other relief available under Section 1981 and 1983. Napolean v. Xerox Corporation, 656 F. Supp. 1120 (1987). Also see, Watson v. Fort Worth Bank & Trust, 798 F.2d 791 (1986).

§§ 1981, 1983 and 1985(3) provide for a jury trial as stated before where compensatory damages are sought. Burch v. Carmody, 377 F. Supp. 1157 (D.C. N.Y. 1974). Some courts seem to permit trial by jury under these circumstances irrespective of the type of relief sought. See, Dolence v. Flynn, 628 F. 2d 1280 (1oth Cir. 1980); Powell v. Pennsylvania Housing Finance Agency, 563 F. Supp. 419 (M.D. P.A. 1983).

Where a claim for which there exists a

right to jury trial, as here, and when it is joined with claim under Title VII, courts have held that the jury must determine all fact issues common to both legal and equitable claims. Jones v. Metropolitan Hospital and Health Centers, 88 FRD 341 (E.D. Mich. 1980); Johnson v. Wolff's Clothiers, Inc. 663 F. 2d 800 (8th Cir.).

In the most recent precedent-setting decisions, the U.S. Supreme Court has expanded the Civil Rights Act of 1866 to include ethnic bias suits. The civil Rights Act of 1866 allows a jury trial, punitive damages, damages for pain and suffering as in the instant case. See, St. Francis College v. Al-Khazraji, S. Ct. No. 85-2169 (1987); Shaare Tefila Congregation v. Cobb, S. Ct. No. 85-2156 (1987).

The Court Order of July 10, 1987 does not address to the dismissal of Count 3 and dismissal of jury as the court recognizes that these grave errors will not escape the scrutiny of appellate courts.

D. A DIRECTED VERDICT DISMISSING COUNT 3 PRESENTED A QUESTION OF FACT FOR THE JURY

Count 3 is based on the violations of petitioner's constitutional and contractual due process rights which has not been disposed of in July 10, 1987 order and the appellant continues to be deprived of his federal rights and constitutionally protected "property" and "liberty" interests.

A directed verdict is appropriate only when the evidence is so clear that a reasonable man could reach but one conclusion. The Judgment of July 10, 1987 does not meet the standard of reasonable person and Count 3 was properly triable by jury as there were questions of fact yet to be resolved by the jury. Papanicolas v. Group Hospitalization Inc., 434 A 2d 403, 404 (D.C. 1981); 1901 Wyoming Avenue Corporative Ass'n v. Lee, 345 A. 2d 456, 461 n.8 (D.C. 1975) (citing Rich v. Sills, 130 A. 2d 920, 922 (D.C. 1957); 4 Williston on Contracts § 616 at 660-62 (3d ed. 1961). Also see, 3 Corbin on Contra-

cts § 554, pp. 222-27 (1960 ed.)

E. RECUSAL OF JUDGE REVERCOMB

Due to judge's bias and collusive improprieties on the part of the court clerks, pro se petitioner was maltreated during the trial and harassed with the result that he did not get justice in the trial court.

Judge Flannery should have transferred the case to Judge Sporkin who concurrently joined with Judge Revercomb, since petitioner was objecting to the wait for Judge Revercomb which was giving an appearance of judge-shopping.

On January 14, 1986 appellant wrote to the Honorable Aubrey Robinson, Chief Judge of the U.S. District Court alerting him of this impropriety of judge shopping, but Judge Revercomb persistently refused to recuse, and clearly demonstrated the prejudice in conducting the trial. In an extrajudicial conference with the Magistrate, Judge Revercomb instructed her to "schedule leading to the termination of this litigation".

On September 30, 1986 appellant petitioned regarding bias and prejudice of Judge Revercomb which was denied by him on October 27, 1986 clearly demonstrating that Judge Revercomb did not meet the test of reasonable person in denying the petition.

During the trial, Judge Revercomb lost all legal prespectives in his effort to terminate the litigation and he ignored the law of the case. Judge Revercomb failed to conduct the trial in accordance with the Pretrial Order and unlawfully dismissed the jury on March 30, 1987.

The decision of July 10, 1987 was rendered without considering the Supplement to Plaintiff's proposed findings of fact and conclusions of law. The appellant filed a motion for reconsideration on hearing on September 25, 1987 to retrieve the record of July 1, 1987 and to straighten the record.

On September 30, 1987, Judge Revercomb denied the motion of plaintiff for reconsider-

ation on hearing and permission to question the jury in his presence. The appellant was left with no recourse except to urge the court to reconsider its order of September 30, 1987 which was again denied and the court directed the Clerk of the Court not to accept any further filing in this matter except by leave of the Court as the record in this case is repleted with pleadings which plaintiff asserts claim identical to those which Court has already ruled upon.

Thus, the appellant has been deprived of the record of July 1, 1987 final argument hearings and other omissions and errors in the record remain uncorrected which have seriously hampered the perfection of his appeal.

Through out Judge Revercomb treated Appellant with prejudice and bias and scorn and anger:

A. Judge Revercomb administered angry rebukes openly

"DR. KAUSHIVA : YOUR HONOR, ONE THING I WANT TO MAKE CLEAR. I AM PROCEEDING HERE PRO SE.

THE COURT: SIR, WE KNOW THAT. WE HAVE KNOWN THAT FOR TEN YEARS."

Trial Transcript, pg. 25, lines 4-7. March 23, 1987.

"DR. KAUSHIVA: I HATE TO BE IN COURT, BUT IF YOU REALIZE TO WHAT EXTENT MY RIGHTS HAVE BEEN FLOUTED YOU WILL, YOUR HONOR --

THE COURT: SIR, PLEASE MAKE YOUR SPEECH SOMEWHERE ELSE."

Trial Transcript, p. 25, line 25 and p.26, lines 1-3. March 23, 1987.

B. Judge Revercomb persistently refused to recuse during the trial:

"DR. KAUSHIVA: CAN I PROFFER MY OBJECTION?

THE COURT: YES. YOU HAVE, SIR, ALREADY PROFFERED YOUR OBJECTION. AND NEED NOT DO IT FURTHER BEFORE ME, BECAUSE I HAVE DISCHARGED THE JURY I AM SATISFIED THIS IS A TITLE VII CASE.

DR. KAUSHIVA: OKAY. YOUR HONOR CAN I MAKE A MOTION FOR RECUSAL.

THE COURT: NO, I THINK YOU BETTER GO ON. YOU CAN MAKE YOUR STATEMENT.

DR. KAUSHIVA: AT THIS POINT, I WOULD LIKE A RECUSAL.

THE COURT: SIR, THAT WOULD REQUIRE A MISTRIAL, AND I'LL SAY YOUR PREVIOUS GROUNDS FOR THAT WERE CONSIDERED BY THE COURT, AND I FELT THE OBLIGATION TO GO FORWARD. I AM TALKING OF SOMETHING MONTHS AGO. ALL OF THAT IS A RECORD YOU CAN ADDRESS THE COURT OF APPEALS ON THAT.

DR. KAUSHIVA: FOR RECUSAL? IF YOU HAVE DENIED IT, I WOULD.

THE COURT: I WANT THE DEFENSE TO PROCEED WITH YOUR WITNESS. IS THIS DR. JONES?

DR. KAUSHIVA: YOUR HONOR, BEFORE WE PROCEED, THERE'S A MOTION FOR RECUSAL ON THE FLOOR.

THE COURT: THE ORAL MOTION IS DENIED. CALL YOUR WITNESS PLEASE.

Trial Transcript, pp. 1080-1081, lines 3-25 and 1-6. March 30, 1987.

DR. KAUSHIVA: AND, YOUR HONOR, ALSO, I MUST URGE THE COURT TO CONSIDER THE TRANSFERRING THIS CASE TO A NEW JUDGE. BECAUSE, YOUR HONOR, SINCE YOU HAVE BECOME THE FACTFINDER, YOU HAVE HEARD VERY PREJUDICIAL, FALSE, AND WHERE THE INTEGRITY OF THE PEOPLE IS INVOLVED, AND I DO NOT THINK THAT YOU WILL BE IN A FAIR POSITION TO RULE.

Trail Transcript, p. 20004, lines 2-7. April 3, 1987.

C. Judge Revercomb restricted the complaint to Title VII only and to the period of 1980 - 1987.

"THE COURT: BUT I WANT YOU, SIR, AND I MUST DIRECT YOU TO THE PERIOD OF 1980, 1987.

DR. KAUSHIVA: ALSO FOR THE DISCRIMINATION?

THE COURT: YES,SIR.

DR. KAUSHIVA: SO YOUR RULING IS THAT--

THE COURT: DON' T ASK ME MY RULING, SIR, I THINK YOU UNDERSTAND.

DR. KAUSHIVA: I WANT TO BE CLEAR ABOUT IT.

****

THE COURT: LET ME SEE YOU AT THE BENCH, PLEASE.

THE COURT: THESE MATTERS SHOULD NOT BE ADDRESSED IN FRONT OF THE JURY.

DR. KAUSHIVA: I THINK WE ARE IN A JURY TRIAL."

Trial Transcript, p. 201 (801), lines 2-9 and 18; 21-25. March 25, 1987.

****

THE COURT: I'M GOING TO RULE, SIR, I EXPECT YOU--- I WANT YOU TO--- I'M GOING TO RENDER SANCTIONS-- THE

> SANCTIONS -- THE SANCTION OF THE COURT YOU'RE NOT GOING-- YOU'RE NOT TO GO INTO THESE MATTERS ANY FURTHER OF ANY QUESTIONS IN THAT PERIOD. YOU'RE GOING TO BEGIN IN 1980 AND I SO RULED AND THE RECORD BEFORE THAT." Trial Transcript, p. (203) 803, lines 15-20. March 25, 1987.

Judge Revercomb should have disqualified under 28 U.S.C. §455 as several factors exist which give rise to an appearance of impropriety. Judge Revercomb may have even lacked the actual involvement and knowledge about the case, but mere appearance of impropriety is sufficient ground for disqualification under §455(a). The purpose of §455(a) is to promote public confidence in the integrity of the judicial system.

There is ample basis in the record for concluding that an objective observer would have questioned Judge Revercomb's impartiality and his failure to disqualify himself was a plain violation of §455(a) and Canon 3C (1984).

A violation of §455(a) - which requires

a judge to disqualify himself in any proceeding in which his impartiality might be reasonably by questioned - is established when a reasonable person, knowing the relevant facts, would expect that a judge knew of the circumstances creating an appearance of partiality, notwithstanding a finding that the judge was not conscious of these circumstances. See, Liljeberg v. Health Services Acquisition Corp., No. 86-957 (U.S. Supreme Court 1988).

CONCLUSION

It is respectfully submitted by Petitioner, pro se, that the district court orders of May 9, 1986 and July 10, 1987 are in violation of the constitutional and civil rights and must be vacated and the Orders of December 4, 1987 and April 7, 1988 of the Court of Appeals, District of Columbia Circuit must be reversed.

For the foregoing reasons, Petitioner prays the Court will grant certiorari,

and order a new trial under a new judge.

Respectfully submitted,

Sd/-
DR. BRAHMA S. KAUSHIVA
Pro se

14405 Culp Court
Silver Spring, Maryland
20904

Phone Number (301)-
384-2722

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that 3 copies of the foregoing WRIT OF CERTIORARI was mailed, postage prepaid, this 6th day of September, 1988 to John Rothchild, Esquire, Bredhoff & Kaiser, Suite 1300, 1000 Connecticut Avenue, N.W., Washington, D.C. 20036 and Mary L. Wilson, Esquire, Room 305, District Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

Sd/-
DR. BRAHMA S. KAUSHIVA
Pro se

14405 Culp Court
Silver Spring, Maryland
20904

Phone Number:
(301) 384-2722

APPENDIX

UNITED STATES COURT OF APPEALS
for the District of Columbia Circuit

NO. 87-7125 September Term 1987
C.A. No. 84-2517

Brahma S. Kaushiva, Dr.,
Appellant

v.

Board of Trustees of
the University of the
District of Columbia, et al.

FILED
December 4, 1987
George A. Fisher
Clerk

BEFORE: Wald, Chief Judge;
Mikva and Edwards, Circuit
Judges

O R D E R

Upon consideration of Appellant's Motion for Summary Reversal, or in the Alternative, for Expedited Consideration; Appellee Faculty Association's Opposition to Motion for Summary Reversal and Motion for Summary Affirmance; Appellee University of District of Columbia's Opposition to Motion for Summary Reversal; and Appellant's Reply and Opposition to Motion for Summary Affirmance, it is

ORDERED by the court that the Motion for Reversal be denied. It is

FURTHER ORDERED by the court that the Faculty Association's Motion for Summary Affirmance be granted for the reasons stated in the district court's order of May 9, 1986. It is

FURTHER ORDERED by the court on its own motion that appellant show cause why the district court's orders of March 22, 1985 and July 10, 1987, should not be summarily affirmed for the reasons stated therein. Appellant shall respond to the show cause order within twenty-one (21) days from the date of this order.

The Clerk is directed to withhold issuance of the mandate herein until resolution of the remainder of the appeal. The Clerk is further directed to send this order to appellant by both first class and certified mail, return receipt requested.

Per Curiam

UNITED STATES COURT OF APPEALS
for the District of Columbia Circuit

No. 87-7125 September Term 1987

C.A. No. 84-2517

Brahma S. Kaushiva, Dr.,

Appellant

FILED APRIL 7, 1988

v.

Constance L'Dupre
Clerk

Board of Trustees of
the University of the
District of Columbia, et al

BEFORE: Wald, Chief Judge
D.H. Ginsburg and Sentelle,
Circuit Judges

O R D E R

Upon consideration of Appellant's response to Shaow Cause Order and the record herein, it is

ORDERED by the court that the order to show cause, issued December 4, 1987, be discharged. It is

FURTHER ORDERED that the district court's orders filed March 22, 1985 and July 10, 1987, be summarily affirmed for the reasons stated therein.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 15.

Per Curiam

UNITED STATES COURT OF APPEALS
for the District of Columbia Circuit

No. 87-7125 September Term 1987

C.A. No. 84-2517

Brahma S. Kaushiva, Dr., Appellant

v.

Board of Trustees of the University of the District of Columbia, et al

September Term, 1987

FILED
June 8, 1988

Constance L. Dupre
Clerk

BEFORE: Wald, Chief Judge;
D.H. Ginsburg and Sentelle,
Circuit Judges

O R D E R

Upon consideration of Petitioner's Petition for Rehearing it is

ORDERED, by the Court, that the petition is denied.

FOR THE COURT:

CONSTANCE L. DUPRE, CLERK

BY: Sd/-
Robert A. Bonner
Deputy Clerk

UNITED STATES COURT OF APPEALS
for the District of Columbia Circuit

No. 87-7125 September Term, 1987
C.A. No. 84-2517

FILED
June 8, 1988
Constance L'Dupre
Clerk

Brahma S. Kaushiva, Dr.

v.

Board of Trustees of
the University of the
District of Columbia, et al.

BEFORE: Wald, Chief Judge; Robinson, Mikva, Edwards, Ruth B. Ginsburg, Starr, Silberman, Buckley, Williams, D.H. Ginsburg and Sentelle, Circuit Judges

O R D E R

Petitioner's suggestion for rehearing en banc has been circulated to the full court. No member of the court requested the taking of a vote thereon. Upon consideration of the foregoing it is

Ordered, by the court en banc, that the suggestion is denied.

FOR THE COURT:
CONSTANCE L. DUPRE, Clerk
BY: Sd/- Robert A. Bonner
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DR. BRAHMA S. KAUSHIVA,	:	
Plaintiff	:	
	:	
v.	:	Civil Action
	:	NO. 84-2517
BOARD OF TRUSTEES OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA, et. al.,	:	FILED
	:	May 9, 1986
	:	James F. Davey Clerk
Defendants	:	

ENTRY OF JUDGMENT

In accordance with the order of May 8, 1986, judgment is hereby entered GRANTING summary judgment to the defendant UDC Faculty Association, and DENYING partial summary judgment to the plaintiff.

SO ORDERED

Sd/-
George H. Revercomb, Judge

May 9, 1986
Date

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DR. BRAHMA S. KAUSHIVA,

Plaintiff,

v.

BOARD OF TRUSTEES OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA, et al.,

Defendants

FILED
MAY - 9, 1986
James F. Davey, Clerk

CA No. 84-2517

ORDER

This matter is before the Court on plaintiff's Motion for Partial Summary Judgement and defendant UDC Faculty Association's Motion for Summary Judgement. The Court has thoroughly considered the motions and responses filed thereto, and heard oral argument on May 6, 1986.

Upon consideration of plaintiff's Motion for Partial Summary Judgemet, it is hereby ORDERED that the motion is DENIED, as there exist genuine issues of material fact which

preclude entering summary judgment.

Upon consideration of defendant UDC Faculty Association's Motion for Summary Judgment, it is hereby ORDERED that defendant's motion is GRANTED.

The law of the case holds that UDC faculty Association is a defendant to Counts II and VII of the plaintiff's Complaint only. Count II alleges the Association conspired to violate plaintiff's rights under 42 U.S.C. §1985(3). After reviewing the extensive discovery plaintiff has conducted, the Court cannot aduce any facts to support plaintiff's claim of a conspiracy. Additionally, there is no evidence in the record of the other two requirements necessary to support an action under 42 U.S.C. §1985(3). There is no evidence in the record of a racial or class-based animus, and plaintiff has alleged no substantive right which would be protected under §1985(3).

Count VII of plaintiff's Complaint alleges the Association violated plaintiff's rights to enter arbitration under the "Arbitration Act" and the Collective Bargaining Agreement, and breached its duty of fair representation to the plaintiff. The plaintiff's claim of unfair representation was the essence of Count XI of the complaint, which has previously been dismissed.

The plaintiff's complaint is vague as to what plaintiff is referring to as the "Arbitration Act". The Court must conclude plaintiff is referring to the Federal Arbitration Act of 1925, 9 U.S.C. §4. This Act provides relief to a party aggrieved by the failure of another to arbitrate under a written agreement for arbitration. The Association has no agreement to arbitrate, precluding plaintiff from any relief under this Act.

The Collective Bargaining Agreement is

between the Association and the University of the District of Columbia. Even if plaintiff were considered a third-party beneficiary of this agreement, the Association has no obligation to arbirtrate plaintiff's grievances. The agreement provides only that the Association may enter arbitration with the University, if the Association concludes it is justified.

Reviewing the entire record in a light most favorable to the plaintiff, the Court concludes there are no material facts which would support plaintiff's calims under Counts II and VII of the Complaint as to defendant Association.

After considering the entire record and assessing the counts remaining in plaintiff's complaint, the Court conludes that this case may proceed more appropriately as an employment discrimination complaint under Title VII of the Civil Rights Act of 1964,

as amended 42 U.S.C.2000e, et. seq. Under this statute, the plaintiff would have to allege UDC's actions has a discriminatory basis. UDC would then have to support its actions with a rational basis and the plaintiff would have the burden of proving that UDC's stated basis is only a pretext.

SO ORDERED

Sd/-
George H. Revercomb, Judge

5/9/86
Date

Dr. Brahma S. Kaushiva
4623 Lincoln Aveneu
Beltsville, Md. 20705

Barbara E. Bergman, Esq.
Bredhoff and Kaiser
1000 Connecticut Avenue, N.W.
Suite 1300
Washington, D.C. 20036

Gloria Lett, Esq.
Assistant Corporation Counsel
Room 3081
The District Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DR. BRAHMA S. KAUSHIVA.	
Plaintiff	
v.	C.A. No. 84-2517
BOARD OF TRUSTEES OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA, et al.,	FILED
Defendants	JULY 10, 1987
	James F. Davey, Clerk

JUDGEMENT ORDER

In conjunction with the Findings of Fact and Conclusions of Law filed this 10 day of July, 1987,

Judgment is entered for defendants.

SO ORDERED.

Sd/-
George H. Revercomb, Judge

July 10, 1987
Date

F-1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DR. BRAHMA KAUSHIVA :
:
v. :
: C.A. 84-2517
BOARD OF TRUSTEES, :
UNIVERSITY OF THE : FILED
DISTRICT OF COLUMBIA : July 10, 1987
James F. Davey, Clerk

FINDINGS OF FACT AND CONCLUSIONS

OF LAW

Findings of Fact

1. Plaintiff, Brahma S. Kaushiva, is an East Indian male who is currently a full professor in the College of Life Sciences at the University of the District of Columbia (hereinafter UDC).

2. Defendants Larry Adams, Dr.Elizabeth Abramowitz, Donald Brown, Dr. Lucy M. Cohen, Peter Benjamin Edelman, Dr. Daniel I. Fivel, F.D.R. Fox, Dr. Thomas A. Hart, Dr. Virginia Howard, Ms. Concha Johnson, Dr. Joyce Payne, Dr. Herbert O. Reid, Joseph Webb, Terry B.

Thomas and Lorraine Whitlock are all members or former members of the Board of Trustees of the University of the District of Columbia.

3. Defendants Patty Whitaker and Janet B. Counts are secretaries in the College of Life Science.

4. Defendant Ewaugh F. Field is the former Interim Provost and Vice President for Academic Affairs, UDC.

5. Defendant Annye C. Buck is the former Dean of the College of Life Sciences, UDC.

6. Defendant Dr. William E. Hyman is the former Associate Dean of the College of Life Sciences.

7. Defendant Dr. Albert Jose Jones is the former Chairman of the Department of Enviornmental Sciences.

8. Defendant James R. Preer is the Coordinator of Integrated Science at UDC.

9. Defendant Victoria C. Guerro is the

Chairman of the Department of Earth and Life Sciences, UDC.

10. Defendant Dr. Claude A. Ford is the Interim President at UDC.

11. Defendant Dr. Samuel Sullivan is the Interim Provost and Vice President for Academic Affairs, UDC.

12. Defendant Ms. Jean Grant is the Assistant Dean, College of Life Sciences, UDC.

13. Defendant Mildred W. Scott is the current Chairperson, Biology Department,UDC.

14. Defendant Dr. Cecil Ramsunder is the Coordinator of fundamental Human Anatomy & Physiology Courses, College of Life Science, UDC.

15. Plaintiff claims that he was subjected to discrimination on the basis of his national origin and age in the terms and conditions of his employment and that he was harassed, contructively discharged and subject

to other retaliation for having filed various complaints and charges of discrimination against UDC.1/

16. Plaintiff was hired in September 1973 under a faculty contract at the Washington Technical Institute as a Professor of Fish/Game and Wildlife in the School of Agriculture and National Resources.

17. Plaintiff was terminated from his position with WTI, effective June 15, 1976. Plaintiff filed several grievances and lawsuits regarding his termination and on March 14, 1980, an arbitration panel determined that WTI's decision not to renew plaintiff's contract was "improper" and that plaintiff should be reinstated with full backpay, seniority and benefits.

1/ Plaintiff has repeatedly contended that he has other viable claims on appeal or pending in this court following previous rulings in this court. The Court has exhaustively reviewed the entire record and conludes plaintiff has no other viable claims remaining.

18. In 1977 the University of the District of Columbia came into existence upon consolidation of the Washington Technical Institute, Federal City College and District of Columbia Teachers College.

19. Plaintiff returned to his faculty position as a full professor (at UDC) effective April 14, 1980. Since beginning his employment at UDC, plaintiff has challenged the University's compliance with the reinstatement order and he further alleges that he has been subjected to retaliation and harassment.

20. The department in which plaintiff was formerly employed at WTI no longer existed because of the consolidation of WTI into UDC. UDC created new and different colleges and departments from its predecessor institutions.

21. Plaintiff was intially placed in the College of Life Sciences, Environmental Services Department.

22. Plaintiff's placement in the Environmental Services Department was interpreted by the University as the nearest equivalent to the program in which plaintiff has been assigned at WTI.

23. Plaintiff challenged his assignment to the Environmental Sciences Department arguing that he should be placed in the Department of Earth and Life Sciences despite the fact that the latter department was slated for a reduction in force.

24. On October 19, 1981, the Dean of the College of Life Sciences recommended an adverse action termination against plaintiff.

25. The adverse action termination was issued in accordance with the procedures set forth in Article 6, B of the Master Agreement.

26. The reasons as set forth in the proposed action were: Failure to meet basic professional standards established by the University; failure to meet responsiblities as a faculty member to treat students fairly,

courteously and professionally; failure to comport with standard, aim and objective of the University; and insubordination.

27. Plaintiff pursued his rights under the Master Agreement and the hearing officer who considered the matter reduced the recommended penalty to a reprimand.

28. Plaintiff was issued a reprimand on March 1, 1983 as a result of the proposed October 19, 1981 adverse action.

29. Plaintiff requested leave to attend a conference from October 4-7, 1983.

30. The leave was initially approved by plaintiff's supervisor, conditional upon final authorization from the Dean of the College.

31. The Dean denied the leave request to a lack of funds and the subject matter of the conference being outside the scope of plaintiff's assigned courses.

32. Plaintiff knew that the University had authority to regulate leave as staff and

and funds are resources which are scare and need to be managed efficiently.

33. Although the leave was not authorized plaintiff attended the conference from October 4-7, 1983.

34. Plaintiff did not miss scheduled classes, and he spent personal funds for travel after his request had been denied; however, leave was required to be absent from other academic duties such as office hours and availability for potential special projects.

35. Plaintiff was placed on AWOL (absent without leave) status from October 4-7, 1983.

36. On October 12, 1983, plaintiff received a proposed adverse action termination due to his poor conduct and job performance.

37. The reasons for the proposed action were: unauthorized leave from October 4, 1983 through October 7, 1983; permitting students to study for a cancelled course; gross insub-

ordination and unprofessional conduct.2/

38. In issuing the October 12, 1983, proposed adverse action defendants Dean Annye C. Buck and Associate Dean William Hyman considered termination as an appropriate penalty in light of an adverse action in October 1981 for similiar conduct, (i.e., insubordination and unprofessional behavior.) Primary investigation into the complaints against plaintiff was performed by Dean Wiliam Hyman. The Court evaluated Dean Hyman's testimony and concludes he was a highly credible witness. The Court could not discern or properly infer any discriminatory motive for Dean Hyman's recommendations.

2/ Defendants suggest the Court should correlate plaintiff's disruptive and confrontational nature in prosecuting his case (See order filed this date addressing motion to clarify record, note 1.) with the characterizations of his demeanor in the work place. The Court will not draw such conclusions, but instead will decide this case on its merits from the record before the Court.

However, the Court does note that plaintiff

39. Plaintiff filed a grievance concerning the proposed adverse reaction.

40. A hearing was held in accordance with the University's Master Agreement with the faculty union. The hearing officer reduced the recommended penalty for plaintiff's poor conduct and performance from termination to suspension without pay effective March 1, 1984.

41. Plaintiff was suspended without pay from March 1, 1984, to May 15, 1984, as a result of the recommendation of the hearing examiner.

Footnote 2/ cont.

has refused to follow the directions of the Court and refused to accept the rulings of the Court. The Court acknowledges that any party is entitled to seek reconsideration of the Court's rulings. In the case of plaintiff, he has sought reconsideration of virtually every ruling of the Court prior to trial, and often has moved for reconsideration of clarification of denials of his intial motions for reconsideration. The vast majority of these motions have been frivolous; presenting no new matters which had not been previously considered by the Court.

42. Plaintiff alleges that he has been denied budgets and travel funds. Budgets are allocated to departments and not individual faculty. Thus, no faculty memeber is granted a personal budget. Travel funds are awarded by the University when monies are available and the requested travel would be of benefit to the University.

43. Plaintiff has been awarded travel funds by the University in those instances where he has met the criteria for issuance of such funds.

44. Plaintiff alleges that he has been denied laboratory facilities. Laboratory facilities and office space at the University are made available depending on space availability and assignments needed for class instruction.

45. Laboratory facilities have been granted plaintiff in accordance with his assignments as needed for class instruction.

46. Plaintiff alleges that he has been enied office space. Plaintiff has been assigned office space in the same manner as all other faculty in his department/college.

47. The limited space available requires the sharing of available work space. Several of plaintiff's co-workers complained they were unable to work with plaintiff due to his disruptive nature.

48. Plaintiff claims that students were discouraged from registering for his class.

49. There is no evidence that students at the University have ever been discouraged from registering for plaintiff's courses.

50. Plaintiff claims that defendants have failed to evaluate him for tenure.

51. The University of the District of Columbia to date has no procedures for awarding tenure to faculty.

52. None of the faculty at UDC, including plaintiff, have been evaluated for tenure.

53. The procedure for evaluation of faculty at UDC are set forth in the Master Agreement.

54. Plaintiff has been provided faculty evaluations in accordance with the procedures set forth in the Master Agreement.

55. All of plaintiff's evaluations have been properly issued and reflect plaintiff's performance for the periods in question.

56. In lieu of tenure, Dr. Kaushiva has been given reserve entrance status which is similar to a tenured position at other universities. He is a full professor at UDC.

57. Plaintiff has alleged that defendants failed to award him summer contracts for 1981 through 1985.

58. Defendants award summer contracts on the basis of need since not all courses offered during the regular school year are offered during the summer months.

59. There is no automatic right to have

a summer contract. A small percentage of faculty are awarded these contracts at the discretion of the University.

60. Plaintiff applied for, but was denied, sabbatical leave in 1982 and 1983.

61. At the time of these applications there were pending adverse actions against the plaintiff.

62. In accordance with Unversity policy, plaintiff's application could not be approved because of the pending adverse actions.

63. Plaintiff also applied for sabbatical leave in 1984 which was approved by the College Committee. This application had to be held in abeyance as well, because of a pending adverse action.

64. Plaintiff was advised that he could take the requested sabbatical leave once the adverse action was resolved but plaintiff refused to do so, under the guidelines required by the University.

65. The College of Life Sciences instituted a reduction-in-force effective at the end of the 1984-85 academic year. Plaintiff alleges that he was improperly placed in the Biology Department because of the Reduction-in-Force.

66. The Department of Earth and Life Sciences and Veterinary Science were slated to be eliminated pursuant to UDC's Master Plan of 1980 and UDC Resolution 84-15. This plan was approved by UDC's Board of Trustees in 1980.

67. According to the Master Plan of 1980 the Departments of Earth and Life Sciences and Veterinary Science were slated for elimiation because these two departments failed to attract a significant number of students and there was little demand for their graduates in comparison with other programs in the College of Life Sciences.

68. Plaintiff, as well as four other

faculty members in the Department of Earth and Life Sciences, was affected by the reduction-in-force.

69. The Master Agreement provided for the exercise of seniority rights within the College of Life Sciences to allow "bumping" of "the least senior faculty member occupying a position in a field of study in which the affected faculty member has received an advanced degree prior to the effective date of this agreement and has taught [in the field] at the University."

70. Plaintiff had "bumping" rights into the Department of Biology.

71. Plaintiff informed the University of his intention to exercise his "bumping rights" and was transferred into the Biology Department where he is currently employed.

72. Plaintiff claims that defendant's elimination of the Department of Earth and Life Sciences and his transfer to the Biology

Department constituted reprisal and is tantamount to a constructive discharge.

Conclusions of Law

1. The complaint was originally filed under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sec. 2000(e) et seq., the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Sec. 621 et seq. The original complaint included alleged violations of constitutional rights as well as other civil rights statutes. In addition the complaint contained a breach of contract claim. Following several pretrial proceedings and four days of trial plaintiff's breach of contract claim was dismissed by the Court, as well as any constitutional claims or alleged civil rights statute violations other than Title VII and the Age Discrimination in Employment Act.

2. The complaint is based on an administrative complaint of discrimination filed in

in 1980.

3. The only issues remaining before the Court are whether the plaintiff was discriminated against based on national origin or age in the various terms and conditions of his employment and whether plaintiff was subjected to harassment or reprisal as a result of exercising his statutory protected rights.

4. The United States Supreme Court has recognized two separate theories under which plaintiff may establish employment discrimination violative of Title VII: (1) the disparate treatment theory, under which the plaintiff alleges that an employer treats some employee less favorably than others because of their race, color, religion, sex or national origin; and (2) the disparate impact theory, under which an employment practice which is neutral on its face is shown, in fact, to affect one group more harshly than another. International Brotherhood of Teamsters v. United States, 431 U.S. 342 (1977). See also, McDonnell Douglas

Corp. v. Green, 411 U.S. 792 (1973) and Griggs v. Duke Power Co., 401 U.S. 424 (1972).

5. Plaintiff in the instant action is asserting the disparate treatment theory of employment discrimination. Plaintiff also alleges reprisals for having filed a complaint under Title VII, and pursuing various administrative and legal remedies.

6. In order to prevail under the disparate treatment theory, plaintiff must prove not only a difference in treatment based on national origin, but also a discriminatory motive on the part of the alleged discriminating officials. International Brotherhood of Teamsters v. United States, 431 U.S. at 335 n. 15; McDonnell Douglas Corp, v. Green, 411 U.S. at 805; Crawford v. Western Electric Co. Inc., 614 F. 2d 1300 at 1309 (5th Cir. 1980).

7. The framework of analysis of a disparate treatment claim in an individual Title VII action has been set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792. Furnco

Construction Co. v. Waters, 438 U.S. 567 (1978); Board of Trustees of Keene State College v. Sweeney, 439 U.S. 24 (1978); and Texas Department of Community Affairs v. Burdine, 101 S. Ct. 1089 (1981).

8. Under the Supreme Court's formulation, the plaintiff must first establish by a preponderance of the evidence a prima facie case of discrimination. Texas Department of Community Affairs v. Burdine, 101 S. Ct. 1089 (1981).

9. In general, a prima facie case consists of facts sufficient to sustain the inferences that the challenged action of the employer was motivated by impermissible considerations. Mosby v. Webster College, 563 F. 2d 901 (8th Cir. 1977).

10. If the plaintiff succeeds in establishing a prima facie case, defendants then have the opportunity to rebut that prima facie case by articulating non-discriminatory reasons for their actions. Defendants need only produce

admissible evidence which would allow the trial court to conclude rationally that the employment decisions had not been discriminatorily motivated. Texas Department of Community Affairs v. Burdine, 101 S. Ct. 1089.

11. Once this rebuttal is made by the defendants, plaintiff has the opportunity to demonstrate that defendant's reasons for their actions are merely a pretext for discrimination. Burdine, 101 S. Ct. at 1089; Furnco Construction Co. 438 U.S. 567; Sweeney, 439 U.S. 24; Mississippi Research and Development Center, 652 F. 2d 488 (5th Cir. 1981). The plaintiff must prove by the preponderance of the evidence that the legitimate reasons offered by the defendants were not the true reasons and that he was a victim of intentional discrimination. Burdine, 101 S. Ct. 1089.

12. Plaintiff is a member of East Indian national origin and introduced some evidence of discrimination. 3/

3/ Although plaintiff alluded in his com-

13. Therefore, plaintiff was able to establish a prima facie case of discrimination on this claim. Defendants then needed to articulate a legitimate non-discriminatory reason for their actions in order to rebut that prima facie case. Burdine. As outlined in the findings of fact above, defendants introduced sufficient evidence of legitimate non-discriminatory reasons for their actions.

14. The general considerations outlined in McDonnell Douglas, also apply to allegations of retaliation under 42 U.S.C. Sec.2000e-3(a) for engaging in protected activity. Lindsey v. Mississippi Research and Development Center, 652 F. 2d 488 (5th Cir. 1981).

15. In order to establish a prima facie case of reprisal or retaliation plaintiff must

---

3 / (-continued)

plaint to discrimination based on age, he hasn't introduced any evidence of age discrimination at trial. Therefore, he has failed to establish even a prima facie case on this theory.

establish:

1) statutorily protected expression; 2) adverse employment action; 3) a causal connection between the protected activity and the adverse claim. Smalley v. City of Eatonville, 640 F. 2d 765, 769 (5th Cir. 1981); Reilley v. Califano, 537 F. Supp. 349 (N.D. Ill. 1981).

16. Assuming arguendo that plaintiff could demonstrate that adverse actions were taken against him, plaintiff would then have to show a causal connection between his filing of a complaint and the actions.

17. The record reveals that plaintiff was confrontational and disruptive and was unwilling to accept the governing authority of the University. Any actions taken against him, were in response to these characteristics and not in retaliation of his complaints.

18. Plaintiff cannot demonstrate any causal connection between the filings of his complaints and any subsequent actions of the defendants which treated the plaintiff like

all others. Moreover, in conjunction with plaintiff's reprisal allegations, defendants have articulated legitimate non-discriminatory reasons for all of their actions. Plaintiff has thus failed to show that defendants' actions were pretext for discrimination. Burdine, 101 S. Ct. 1089.

19. In summary, defendants have demonstrated that all of the actions taken by them did not treat the plaintiff any differently than others, but assuming arguendo they did, all of the actions were justified, legitimate, rational, and non-discriminatory.

20. Plaintiff has failed to show that any of the legitimate non-discriminatory reasons demonstrated by defendants were merely pretexts for national origin discrimination or retaliation. Therefore, plaintiff has failed to prove by a preponderance of the evidence that the legitimate reasons offered by the defendants were not true reasons and that he was the victim of intentional discrimination

or retaliation. See, Texas Department of Community Affairs v. Burdine, 101 S. Ct. 1089; Furnco Construction Co. v. Waters, 438 U.S. 567; Board of Trustees of Keene State College v. Sweeney, 439 U.S. 24; Furnco Construction Co. v. Waters, struction Co. v. Waters, 438 U.S. 578; McDonnell Douglas Co. v. Green, 411 U.S. at 804.

Accordingly, plaintiff's claims must fail, and judgment is GRANTED to defendants.

Sd/-
George H. Revercomb, Judge

July 10, 1987
Date

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DR. BRAHMA S. KAUSHIVA, :

Plaintiff, :

v. : Civil Action No. 84-2517

THE BOARD OF TRUSTEES OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA, et al., : FILED March 22, 1985 James F. Davey Clerk

Defendants. :

MEMORANDUM

This matter is before the court on a motion by defendants for dismissal and abatement or, in the alternative, for a stay, attorneys' fees, and affirmative relief, and plaintiff's motion for expedited proceedings on his complaint. For reasons discussed herein, defendants' motion for dismissal and abatement will be granted in part and denied in part and plaintiff's motion for expedited proceedings will be denied.

Background

Plaintiff, pro se, is currently a professor in the Department of Earth and Life Sciences in the Division of Natural Resources of the College of Life Sciences at the University of the District of Columbia ("UDC"). In this suit, which is apparently the third lawsuit he has filed regarding his employment at UDC, plaintiff alleges diparate treatment; pattern and practice discrimination; reprisal, retaliation, and discriminatory harassment; breach of contract; interference with existing and future commercial relationships; violation of the collective bargaining agreement; violation of his rights to arbitration of his grievances; commission of and conspiracy to commit various identified and unidentified "personal torts"; violation of his rights to due process under the United States Constitution; and breach of the duty of fair representation by the UDC Faculty

Association of the National Education Association. In their motion, defendants allege that all of these causes of action have been raised in arbitration and previous lawsuits in D.C. Superior Court, and that all of these claims have been ruled on .

Plaintiff, who is an Asian Indian, originally filed a complaint of discrimination and harassment on the basis of national origin on June 10, 1975. Despite a probable cause determination by the D.C. Office of Human Rights that plaintiff's national origin was a factor in the decision not to renew plaintiff's contract, plaintiff was terminated effective June 15. 1976. On February 24, 1978, the EEOC overruled the D.C. OHR probable cause determination, but on March 14, 1980, an arbitration panel determined that the decision not to renew plaintiff's contract was "improper," and that he should be reinstated with back pay, seniority, and ben-

efits. That arbitration award was confirmed by the D.C. Superior Court in Kaushiva v. Local 2142, No. 5792-77, in Orders dated July 18, 1980, and September 15, 1980. Plaintiff returned to UDC effective April 14, 1980.

Since that time, plaintiff has challenged UDC's compliance with the reinstatement orders on a number of occasions. Plaintiff's motion to force compliance in No. 5792-77 were denied by Judge Goodrich on June 15, 1981, and July 17, 1981. On March 12, 1982, Judge Goodrich denied plaintiff's motion for a temporary restraining order, and on April 24, 1982, he denied plaintiff's motion to compel arbitration. Finally, on August 20, 1982, an arbitrator denied "grievances dealing with summer contracts, sabbatical leave, facilities, funds, equipment, class assignments, and all other working conditions ...," and also denied the greviance requesting tenure. Plaintiff's Opposition to Motion of Defendants for

Dismissal and Abatement, or, in the Alternative, for a Stay, Attorneys' Fees, and Affirmative Relief, Exhibit A. Plaintiff was deemed to be entitled to reinstatement in the Department of Earth and Life Sciences at UDC. Id. That arbitration award was ordered enforced by Judge Goodrich on November 3, 1982. Motion of Defendants for Dismissal and Abatement, or, in the Alternative, for a Stay, Attorneys' Fees, and Affirmative Relief at 4 [hereinafter cited as "Defendants' Motion"]. On July 26, 1983, Judge Goodrich denied plaintiff's motion to modify, correct, or vacate the arbitration award.

Most recently, plaintiff's motion to enforce compliance with the 1980 arbitration award was denied by Judge Goodrich on July 17, 1984, when he ruled that all previously raised issues were res judicata and that a "new" grievance regarding the phase-out of the Department of Earth and Life Sciences was

to be resolved by arbitration, and he ordered plaintiff to cease filing pleading on the same issues. Defendants' Motion at 4. Finally, on January 22, 1985, Judge Holmes of the D.C. Superior Court denied plaintiff's motion for a temporary restraining order against UDC's alleged noncompliance with the 1980 court order, finding no imminent or irreparable harm, no likelihood of success on the merits, failure to exhaust administrative remedies, and no evidence of disparate treatment. Memorandum of Defendants in Opposition to Motion for Expedition at 2. 1/

On April 3, 1984, plaintiff filed another complaint in D.C. Superior Court which contains allegations virtually identical to those raised in the complaint in the case at bar. In Kaushiva v. University of the District of Columbia, No. 4373-84, plaintiff alleged deprivation of his rights, privileges and immunities under the fifth amendment to the United States Constitution; interference with

contractual rights; breach of contract; interference with existing and future contractual relationships; deprivation of due process rights; violation of the collective bargaining agreement; conspiracy to commit a tort; and breach of the duty of fair representation. In that case, plaintiff's motion for a temporary restraining order and a preliminary injunction were denied by Judge Murphy, who ordered further proceedings in the case stayed pending the outcome of a current arbitration of plaintiff's grievances. Defendants' Motion at 4-5. Plaintiff denies that any arbitration is currently going on. Plaintiff's Oppostion to Motion of Defendants for Dismissal and Abatement at 3.

Discussion

Plaintiff opposes defendats' motion for dismissal on the ground that his complaint in this case raises federal questions of race discrimination for the first time. Plaintiff

correctly argues that the prior arbitration awards do not have preclusive effect against actions brought under federal civil rights statutes. See McDonald v. City of West Branch, Michigan, 104 S. Ct. 1799, 1802-03 (1984). Also, although it is clear that adjudication of discrimination claims in state court may have preclusive effect on a civil rights suit in federal court over those same claims, it does not appear that plaintiff has directly raised employment discrimination claims in his suits in D.C. Superior Court. Despite references to "disparate treatment" in No. 4373-84, none of the counts of the complaint specifically refer to employment discrimination as a cause of action; rather, plaintiff's sole constitutional claim appears to be a violation of his due process rights under the fifth amendment.

Nevertheless, most of the claims in plaintiff's compalaint in the case at bar have

no relation to civil rights claims, and are virtually identical to the counts in the complaint in the case at bar in his most recent D.C. Superior Court case, No. 4373-84. Careful analysis of the complaints reveals that counts 3, 4, 5, and 6 (breach of contract, interference with existing and future commercial relationships, and violation of the collective bargaining agreement) of this case are contained in count 2 of No. 4373-84. Counts 8 and 9 of this case (severe emotional distress and conspiracy to commit a "personal tort") are the same as count 3 of No. 4373-84. Count 10 of the case at bar (violation of plaintiff's rights to due process under the Constitution) repeats the same allegations as counts 1 and 2 of No. 4373-84. Finally, count 11 of this case (breach of the duty of fair representation) is identical to count 4 of the Superior Court lawsuit.

For reasons of efficient judicial administration alone, two suits on the same causes

of action should not be maintained simultaneously in the Superior Court and the United States District Court. While defendants are not entitled to abatement of plaintiff's duplicative federal suit as a matter of right, this court has the discretion to dismiss the identical counts, and, in light of the long history of plaintiff's various actions in the Superior Court, concludes that abatement and dismissal is proper. See, e.g., Blinder, Robinson & Co., Inc. v. United States Securities and Exchange Commission, 692 F. 2d 102, 105-06 (10th Cir. 1982); Jones v. John W. Glen, Inc., 397 F. 2d 714, 716 (D.C. Cir. 1968). Furthermore, no pursuasive reason has been advanced for this court to exercise its discretion to hear the pendent nonfederal claims raised in plaintiff's complaint, many of which appear to raise issues which have been the subject of adjudication in the local District of Columbia courts for years, and several of which may have either already been decided or are

the subject of mandatory arbitration. Therefore, counts 3, 4, 5, 6, 8, 9, 10 and 11 of the plaintiff's complaint will all be dismissed.

Still remaining are counts 1, 2, and 7. Count 1 alleges disparate treatment and pattern and practice discrimination in violation of Title VII and 42 U.S.C. §§ 1981 and 1983. Count 2 alleges reprisal, retaliation, and harassment in violation of Title VII, 42 U.S.C. § 1985(3), and Title VI of an unidentified statute. Count 7 alleges "violation of the Arbitration Act," which is apparently a reference to plaintiff's right to compel arbitration under 9 U.S.C. § 4. Although it appears to the court that these some or all of these claims may be barred on grounds of failure to exhaust administrative remedies, statute of limitations, or res judicata, information in the present record is insufficient to justify dismissal. In order to expedite resolution of plaintiff's remaining claims, the court will

briefly outline some of the factors precluding dismissal at this time. 2 /

Regarding plaintiff's claims of racial discrimination in violation of Title VII, 42 U.S.C. §2000e, et seq., it is unclear whether the U.S. Department of Justice ever officially notified plaintiff of his right to bring suit on the complaints he apparently filed with D.C. Office of Human Rights and the Equal Employment Commission in 1975 and 1976. Therefore, it is unclear when the 90-day limitations period for filing suit began to run, if at all. See Cox v. Consolidated Rail Corp., 557 F. Supp. 1261, 1263 (D.D.C. 1983). It is also too early to determine the extent to which plaintiff's complaint raises claims which were either never raised before the EEOC or which are not closely related to the claims upon which he did file complaints. This court may lack subject-matter jurisdiction over any such claims due to plaintiff's failure to exhaust his administrative remedies. See, e.g., Serpe v.

Four-Phase Systems, Inc., 718 F. 2d 935, 936 (9th Cir. 1983); Dickey v. Greene, 710 F 2d 1003, 1005 (4th Cir. 1983); Ibrahim v. New York State Department of Health, 581 F. Supp. 228, 233 (E.D.N.Y. 1984); Thompson v. International Association of Machinists and Aerospace Workers, 580 F. Supp. 662, 664-66 (D.D. C 1984); Kissi v. Wriston, 584 F. Supp. 55, 57 (D. Md. 1983); Knauth v. North Country Legal Services, 575 F. Supp. 897, 900 (N.D.N.Y. 1983); cf. Zipes v. Trans World Airlines, Inc., 102 S. Ct. 1127, 1132 (1982). The determination of which, if any, of plaintiff's Title VII claims are still viable and which are barred on grounds of timeliness, exhaustion, or jurisdiction will thus have to be made at a later date. Similarly, some of plaintiff's claims under 42 U.S.C. §§ 1981, 1983, and 1985(3) may be barred under the applicable local statute of limitations. Finally, the court is unable to determine whether the Superior Court's Order of April 24, 1982, or some other order issued

in the course of related suits in Superior Court, denying plaintiff's attempt to compel arbitration may be res judicata of plaintiff's present attempts to compel arbitration in count 7 of his complaint.

To clarify what remains of plaintiff's complaint, allegations of violations of his rights under the first and fourteenth amendments to the United States Constitution, 28 U.S.C. § 1343, 42 U.S.C. §§ 1981, 1983, 1985(3), and 2000e et seq.; and 9 U.S.C. § 4 (counts 1, 2, and 7 of his complaint) are still viable. All other counts are dismissed. An appropriate Order accompanies this Memorandum.

Sd/- Thomas A. Flannery
UNITED STATES DISTRICT JUDGE

Footnotes

1/ A more complete chronology of the numerous grievances, lawsuits, and appeals filed by plaintiff appears as an Appendix to an Opinion and Order in Kaushiva v. Local 2142, No. 5792-77 (D.C. Sup. Ct. March 1, 1985).

2/ The court in no way intends that the following discussion be interpreted as an

exhaustive list of possible issues which remain to be addressed, or that defendants are precluded from attempting to demonstrate that prior adjudication of some of plaintiff's claims in D.C. Superior Court is not res judicata of the civil rights claims plaintiff has raised in the case at bar.

O R D E R

This matter comes before the court on a motion by defendants for dismissal and abatement or, in the alternative, for a stay, attorney's fees, and affirmative relief, and plaintiff's motion for expedited proceedings on his complaint. For reasons discussed in the accompanying Memorandum, filed by the court this date, it is, by the court, this 22nd day of March, 1985,

ORDERED that counts 3, 4, 5, 6, 8, 9, 10, and 11 of plaintiff's complaint are dismissed; and it is further

ORDERED that plaintiff's motion for expedited proceedings on his complaint is denied; and it is further

ORDERED that a status conference shall be held on April 25, 1985, at 9:30 a.m.

Sd/- Thomas A. Flannery
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DR. BRAHMA S. KAUSHIVA,
Plaintiff,

v.

BOARD OF TRUSTEES OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA, et al
Defendants

Civil Action
No. 84-2517

FILED
April 18, 1985
James F. Davey, Clerk

O R D E R

This matter comes before the court on plaintiff's motions for reconsideration of this court's Order of March 22, 1985, for leave to amend his complaint, and to compel answers to interrogatories and request for production of documents.

Defendants have also filed a motion for an enlargement of time to file a response to the complaint pending the court's ruling on plaintiff's motions. After careful consideration of plaintiff's motions, and the oppositions thereto, it is, by the court, this 18th day of April, 1985,

ORDERED that plaintiff's motion for re-

consideration is denied; and it is further

ORDERED that insofar as plaintiff attempts to state a cause of action for violation of his right to due process under the fifth amendment to the United States Constitution as a result of "constructive retaliatory discharge," plaintiff's motion for leave to amend complaint by adding new count 3 is granted; and it is further

ORDERED that plaintiff's motion for leave to amend complaint by adding new counts 5 and 6, regarding emotional distress from discriminatory practices and retaliation and breach of the duty of fair representation, is denied; and it is further

ORDERED that plaintiff's motion to compel answers to interrogatories and request for production of documents is denied; and it is further

ORDERED that defendants shall file an answer to the complaint no later than April 29, 1985; and it is further

ORDERED that a status hearing shall be held in this matter on April 30, 1985 at 9:30 a.m.

Sd/- Thomas A. Flannery
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRAHMA S. KAUSHIVE, DR.,
Plaintiff,

v.

BOARD OF TRUSTEES OF
UNIVERSITY OF D.C., et al.,
Defendants.

Civil Action
No. 84-2517

FILED
August 29, 1985

James E. Davey
Clerk

O R D E R

This matter comes before the court on the Report and Recommendation of United States Magistrate Dwyer of August 6, 1985 regarding the extent to which the remaining counts of plaintiff's complaint still state claims against defendant Faculty Association of the University of the District of Columbia. This court had referred that issue to the Magistrate by Order dated June 24, 1985. The Magistrate, after hearing oral arguments from plaintiff and counsel for the Faculty Association on July 18, 1985, has recommended that the Faculty Association remain a party to this action under counts 2 and 7 of the complaint. No objections

have been filed by either party to the Magistrate's Report and Recommendation. After reviewing the pro se plaintiff's complaint, the court agrees with the Magistrate's reasoning and adopts her recommendation in full. Therefore, it is, by the court, this 29th day of August, 1985,

ORDERED that defendant Faculty Association of the University of the District of Columbia remain a party to this action under counts 2 and 7 of plaintiff's complaint.

Sd/- Thomas A. Flannery
UNITED STATES DISTRICT
JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRAHMA S. KAUSHIVA, DR.	:	
Plaintiff	:	
v.	:	Civil Action No.
	:	84-2517
BOARD OF TRUSTEES OF UNIVERSITY OF D.C, ET AL.	:	FILED AUGUST 6, 1985
Defendants	:	CLERK, US DISTRICT COURT, DISTRICT OF COLUMBIA.

REPORT AND RECOMMENDATION

This matter is before the Court, by referral from the Honorable Thomas A. Flannery, to determine "the extent to which the remaining counts of plaintiff's complaint still state claims against defendant Faculty Association." Order, June 24, 1985. This Court heard oral arguments from plaintiff, pro se, and Faculty Association counsel on July 18, 1985.

Following Judge Flannery's Orders of March 22 and April 18, 1985, plaintiff's

complaint presently contains four counts: 1, 2, 3, and 7, alleging deprivations of his constitutional and civil rights by numerous defendants. Plaintiff has provided the Court with a copy of "withdrawal" from the largely duplicative litigation he filed in the District of Columbia Superior Court, Kaushiva v. University of District of Columbia, No. 4373-84. Without considering the effect of the withdrawal upon previously disallowed counts, this Court finds allegations in the complaint that, when liberally construed, apply to the Faculty Association.

Count 2 alleges a conspiracy under 42 U. S.C. 1985(3) between all defendants resulting in deferential, discriminatory, and adverse actions taken against him following his reinstatement on the faculty in 1980. Count 7, likewise, contains allegations regarding plaintiff's rights under the Arbitration Act and th Collective Bargaining Agreement, to which the Faculty Association is a signatory.

The Faculty Association, under its Constitution and By-laws, is to represent member employees "relative to employment conditions and employer-employee relations," including assistance with and evaluation of grievances to be submitted to arbitration. Constitution Art. II.1 and By-laws VII 7.2.1, 7.2.5, September 1978. The Collective Bargaining (Master) Agreement establishes a five level grievance procedure requiring the Faculty Association to determine whether to take a grievance to arbitration. Article 10D (5), page 10, effective 1982. The Association is also required, in appropriate instances, to reimburse grievant members for the expenses incurred during their grievance procedures.

Count 7 could, therefore, be read to contain at least three claims directed against the Faculty Association arising out of the Collective Bargaining Agreement: failure to represent, failure to take a grievance to arbitration and failure to reimburse

plaintiff for his expenses during the grievance process.1/ Additionally, the Assoiciation may have acted as conspirator so as to deprive plaintiff of constitutional and civil rights actionable under 42 U.S.C. 1985(3). See, Thompson v. International Association of Machinists and Areospace Workers, 580 F. Supp. 622 (D.D.C. 1984). This Court is aware of the judicial inclination in this Circuit to construe broadly the complaints of pro se

---

1/ This finding should in no way be taken as a ruling on the merits of plaintiff's complaints against the Faculty Association. The scope of the Faculty Association's responsibility to and the assistance it rendered plaintiff require further elucidation through discovery, pretrial motions, and, possibly, proof at trial. It is sufficient for this recommendation that plaintiff alleges wrongdoing by the Faculty Assoicaition . See, Fed. R. Civ. P. 8(f).

litigants, as well as the legislature's intent to keep "accessible to individuals untrained in negotiating procedural labyrinths" the benefits of Title VII's remedial measures. Loe v. Heckler, No. 84-5369, July 26, 1985.

It is, therefore, the recommendation of this Court that the Faculty Association of the University of D.C. remain a party to this action under counts 2 and 7 of the complaint.

Sd/-

August 6, 1985

JEAN F. DWYER
United States Magistrate

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

DR. BRAHMA S. KAUSHIVA	:	Received for docketing. Civil Clerk's Office
Plaintiff	:	July 6, 1984
	:	CIVIL ACTION NO.
v.	:	4373-84
UNIVERSITY OF THE DISTRICT OF COLUMBIA, et al.	:	
Defendants	:	

ORDER

Upon consideration of the motion of defendants University of the District of Columbia, the Board of Trustees of the University of the District of Columbia, Dr. Robert L. Green, Dr. Ewaugh Fields, Dr. Annye C. Buck, Dr. William Hyman, Dr. Albert Jose' Jones, Dr. James R. Preer, Dr. Victoria C. Guerrero, Mrs. Patty Whitaker and Mrs. Janet B. Counts for a stay pending arbitration, and the record herein, it is hereby, this 6 day of July, 1984.

ORDERED: That said motion is granted and this proceedings is stayed pending the completion of arbitraiton or until further order of the court.

Sd/-

TIM MURPHY, JUDGE

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA
CIRCUIT

No. 86-5026 September Term, 1985

C.A. NO. 84-02517

United States Court of Appeals for the District of Columbia Circuit

Brahma S. Kaushiva, Dr.,

Appellant

v.

Board of Trustees of the University of the District of Columbia, et. al.

George A. Fisher
Clerk

Filed May 13,1986

BEFORE: Edwards, Starr and Silberman, Circuit Judges

ORDER

Upon consideration of appellant's Motion for Summary Reversal, appellee's Motion to Dismiss, and the response thereto, it is

ORDERED by the court that the motion to dismiss be granted. The district court's order of January 8, 1986 was not a final order under 28 U.S.C. § 1291. In addition, the

district court did not certify the order as final under Rule 54 (b) of the Federal Rules of Civil Procedure. The order is not appealable under 28 U.S.C. §1292 (a) (1) as an order refusing an injunction, because it neither narrows the range of activity about which appellant may complain, nor restricts the breadth of relief to which appellant may complain, nor restricts the breadth of relief to which appellant may be entitiled. See Waters v. Heublein, Inc., 547 F. 2d 466, 468 (9th Cir. 1976). As the district court observed Count 7 of appellant's complaint may be construed to contain several claims directed against the Faculty Association that are essentially similar to the allegations in Count 11. See Kaushiva v. Broad of Trustees, C.A. No. 84-2517 (D.D.C. August 29, 1985) (Magistrate's Report and Recommendation). It is

FURTHER ORDERED by the court that the motion for summary reversal or expedited

review be dismissed as moot.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See Local Rule 14.

Per Curiam

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DR. BRAHMA S. KAUSHIVA,	:	
PLAINTIFF	:	
-V-	:	
		CIVIL ACTION
BOARD OF TRUSTEES OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA, ET AL.	:	84-2517
DEFENDANTS	:	

MARCH 30, 1987

WASHINGTON, D.C.

THE ABOVE ENTITLED MATTER CAME ON FOR FURTHER TRIAL BEFORE THE HONORABLE GEORGE H. REVERCOMB, UNITED STATES DISTRICT JUDGE, AND A JURY, COURTROOM NO. 10, COMMENCING AT APPROXIMATELY 10 A.M.

(EXCERPT)

PROCEEDINGS

(EXCERPT)

TIME: 2:15 P.M.

THE COURT: LADIES AND GENTLEMEN, YOU WERE ASKED TO SIT IN THIS CASE AS JURORS ON ONE OF THE CAUSES OF ACTIN BROUGHT BY THE PLAINTIFF IN THIS CASE, WHICH IS COUNT 3 OF THE COMPLAINT, AND WHICH REMAINED IN THE COMPLAINT, WHICH ALLEGES DEPRIVATION OF CONSTITUTIOAL RIGHT FOR WHICH A JURY WAS IMPOUNDED. DURING LAST WEEK AND TODAY, YOU HAVE HEARD TESTIMONY FROM THE PLAINTIFF AS TO THE NATURE OF EVIDENCE SUPPORTING THAT CAUSE OF ACTION. I ALSO HAD A WRITTEN PROFFER OVER THE WEEKEND THIS MORNING RECEIVED FROM THE PLAINTIFF-PRO-SE AS TO WHAT HIS EVIDENCE SHOWS IN THAT REGARD, AND, ESSENTIALLY, AGAIN IT GOES TO WHAT HE LABELS IN COUNT 3 AS CONSTRUCTIVE RETALIATORY DISCHARGE, ASSERTING THAT THE R.I.F., OR THE ELIMINATION OF HIS DEPARTMENT, THE FINDING OF HIM AS "AWOL", AND

THE SUSPENSION OF HIM WITHOUT PAY FOR 10 WEEKS VIOLATED HIS CONSTITUTIONAL RIGHTS.

THE COURT HAS RULED AS A MATTER OF LAW THAT THOSE MATTERS, IF ESTABLISHED, IS NOT JUSTIFIED, WOULD NOT RISE TO THE LEVEL OF A VIOLATION OF HIS CONSTITUTIONAL RIGHTS. THAT IS TO SAY, THEY ARE NOT LEGALLY SUSTAINABLE ANY LONGER IN THIS CASE BECAUSE I FIND NOTHING ELSE THAT HAD OCCURRED TO HIM THAT WOULD BE, THAT HE TESTIFIED TO, THAT WOULD BE A VIOLATION OF HIS CONSTITUTIONAL RIGHTS.

THERE ARE SEVERAL THINGS IN THAT COUNT 3 WHICH ARE LEGAL MATTERS, BUT I WANTED TO EXPLAIN TO YOU THAT THE CASE IS NOT OVER, IT IS NOT OVER BECAUSE COUNTS 1 AND 2 REMAIN IN THE CASE.

I HAVE RULED THAT THE PLAINTIFF HAS MADE WHAT WE CALL A PRIMA FACIE CASE, AND WHAT THE COURT DOES IS DETERMINES THAT VIEWING THE EVIDENCE MOST FAVORABLE TOWARD THE PLAINTIFF, AS I MUST DO AT THIS TIME, THAT A PRIMA FACIE CASE OF DISCRIMINATION, AS TO NATIONAL ORIGIN,

AND DISCRIMINATION THROUGH RETALIATION HAS BEEN MADE.

NATIONAL ORIGIN IS VERY CLOSE AND VERY DIFFICULT, BUT THE FACT THAT THE PLAINTIFF IS OF A NATIONAL ORIGIN PROTECTED IN THESE MATTERS, AND THE FACT THAT HE HAS INTRODUCED SOME EVIDENCE OF DISCRIMINATION, THE COURT WILL REQUIRE THE DEFENSE TO GO FORWARD AND DEFEND THAT COUNT 1.

THAT IS A NONJURY MATTER. IT WILL BE TRIED BEFORE THE COURT. AND THE COURT IS REQUIRED TO MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH REGARD TO IT.

COUNT 2, WHICH THE COURT BELIEVES IS THE STRONGEST PRIMA FACIE CASE -- WHICH, AGAIN, DOESN'T MEAN THAT THE PLAINTIFF HAS PROVED HIS CASE, BUT IT MEANS THAT THE DEFENSE IS REQUIRED TO GO FORWARD -- IS THAT THE DEFENDANT RETAILIATED, WHICH IS A FORM OF DISCRIMINATION, RETAILIATED AGAINST THE PLAINTIFF BECAUSE OF HIS SUCCESS IN BEING REINSTATED THROUGH ARBITRATION BACK IN 1980.

AGAIN, THAT INVOLVES THE FORMS OF RETALIATION BEING THE REDUCTION IN FORCE THROUGH THE ELIMINATION OF HIS DEPARTMENT, AND ALL THE FACTS THAT RELATE TO THAT, AND ARGUMENT CAN BE MADE, AND ARGUMENT WILL BE MADE, AND EVIDENCE WILL BE PRESENTED AND IT HAS ALREADY BEEN PRESENTED THROUGH ADVERSE WITNESSES CALLED BY THE PLAINTIFF THAT INDEED EXPLAINED THE ACTIONS OF WHY THE DEPARTMENT WAS ELIMINATED AND THE PROCEDURES THAT WERE UNDERTAKEN TO ELIMINATE IT, AND HOW THEY RELATED TO THE PLAINTIFF'S ROLE AT THE UNIVERSITY AND HIS POSITION..

SO, I AM LEAVING COUNT 1 AND TWO IN THE CASE, AND REQUIRING THE DEFENSE TO GO FORWARD. AND FOLLOWING THEIR PRESENTATION OF THE CASE, THE PLAINTIFF, IF THEY OFFER EXPLANATION FOR ALL THE ACTIONS THAT WERE TAKEN AND HAVE ADDITIONAL EVIDENCE ON THAT -- WHICH IS MY UNDERSTANDING THEY WILL , THROUGH THE PROFFER OF THE DEFENSE AND THROUGH DISCOVERY THAT HAS TAKEN PLACE IN THE CASE AND THE OTHER WITNESSES THAT WE HAVEN'T HEARD FROM ON THESE MATTERS

-- THEN THE PLAINTIFF HAS AN OPPORTUNITY TO COME AND SAY THAT IS NOT SO; THAT WHAT THEY SAY IS PRETEXTUAL; THAT IS, A PRETEXT; THEY TRULY DID DISCRIMINATE AGAINST ME AND WHAT THEY SAY ARE THE REASONS THEY DID SO IS PURE PRETEXT; AND HE CAN OFFER EVIDENCE ON THAT.

HOWEVER, THOSE FIRST TWO COUNTS ARE NON-JURY MATTERS. THEREFORE, I CAN EXCUSE THE JURY AT THIS TIME WITH THE THANKS OF THE COURT FOR YOUR ASSISTANCE HERE THROUGHOUT THIS TRIAL, AND ASK THAT YOU RETURN TO THE JURY ROOM AND THE CASE WILL PROCEED NON-JURY.

THE COURT WOULD HAVE THE ADDITIONAL OPTION OF KEEPING THE JURY AS AN ADVISORY JURY. I THOUGHT OF DOING THAT ON NON-JURY MATTERS. IF THE OTHER COUNT HAD REMAINED IN, I WOULD BE INCLINED TO DO THAT. ALTHOUGH I AM NOT CERTAIN THAT I WOULD AS AN ADVISORY JURY, WHICH WOULD BE STRICTLY IN TERMS OF ASSISTING THE COURT AS THE FINDER OF FACT. HOWEVER, THE JURY DEMAND IN THE CASE THE COURT HAS RULED OUT OF THE CASE AS A MATTER OF LAW.

DR. KAUSHIVA: COULD I PROFFER MY OBJECTION TO THAT?

THE COURT: AS SOON AS I EXCUSE THE JURY. THE JURY IS EXCUSED. YOU HAVE ALREADY MADE YOUR OBJECTION AND I'LL PERMIT YOU TO MAKE IT AGAIN.

DR. KAUSHIVA: NOT BEFORE THE JURY?

THE COURT: NO, SIR.

DR. KAUSHIVA: I WANT TO KNOW WHAT ONE THING, (SIC) YOUR HONOR. COULD I THANK THE JURY?

THE COURT: YOU MAY THANK THEM AS THEY LEAVE.

DR. KAUSHIVA: I SIMPLY THANK YOU FOR YOUR TIME, JURY, AND IT HAS BEEN A PLEASURE TO HAVE YOU HERE. IN MY QUEST AND SEARCH FOR JUSTICE I TROUBLED YOU TO COME HERE, AS COMMUNITY MEMBER. THANK YOU VERY MUCH.

THE COURT: THE JURY IS EXCUSED.

(TIME: 2:25 P.M.)

* * * * * * * *

(sic should read:"I want to say one thing")

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DR. BRAHMA S. KAUSHIVA,

Plaintiff

vs.

Civil Action No.
84-2517

BOARD OF TRUSTEES OF
THE UNIVERSITY OF THE
DISTRICT OF COLUMBIA, ET AL

Defendants

PRETRIAL PROCEEDINGS

STATEMENT OF NATURE OF CASE:

Employment discrimination (age and national origin); reprisal, retaliation and harassment in violation of Civil Rights; and breach of contract; jury trial.

UNDISPUTED FACTS:

Undisputed facts are attached hereto.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL COVER SHEET

DR. BRAHMA S. KAUSHIVA
4623 Lincoln Avenue
Beltsville, Md. 20705
(301) 937-2408

Plaintiff

V.

BOARD OF TRUSTEES OF THE UNIVERSITY
OF THE DISTRICT OF COLUMBIA
C/O Mrs. Antonell K Aikens
Executive Director, Board of Trustees
of the University of the District of
Columbia, Suite 204, 800 Mt. Vernon Pl.
Washington D.C. 20001, et al.

Defendants

BASIS OF JURISDICTION

☒ Federal Question

CAUSE OF ACTION

Constitutonal Deprivation rights secured under Ist, 5th, and 14th Amendments. Job Discrimination and Retaliation 28 USCA 1331, 1332, 1337, 1343, and related statutes 9 USCA 4; 29 USCA 185; 42 USCA 1981, 1983, 1985 (3) Federal Statute 1866.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DR. BRAHMA S. KAUSHIVA	:	
Plaintiff	:	
v.	:	C.A. No. 84-2517
BOARD OF TRUSTEES OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA, et al.	:	
Defendants	:	

COMPLAINT OF EMPLOYMENT DISCRIMINATION AND RETALIATION

THE PLAINTIFF complains of the defendants and pleads:

I. NATURE:

1. This is an action for declaratory relief, injunctive relief and damages to redress the deprivation of rights secured to the Plaintiff under the provisions of the equal protection clauses of the First Amendment, Fifth Amendment and the Fourteenth Amendment to the Constitution of the United

States, Title VII of the Civil Rights Act of 1964, as amended in 1972, 28 U.S.C. 1343; 28 U.S.C. 1331; 28 U.S.C. 1332; 28 U.S.C. 1337; 42 U.S.C. 1981; 42 U.S.C. 1983; 42 U.S.C. 1985(3); 42 U.S.C. 2000(e) et seq.; 2000 5(f); 42 U.S.C. 2000(e) (16)(c); 28 U.S.C. 2201; 28 U.S.C. 2202; 29 U.S.C.A. 185; 9 U.S.C.A. 4; and Federal Statute 1866.

II. JURISDICTION:

2. This court has jurisdiction under, inter alia, 29 U.S.C.A. 1331, 1332, 1337, 1343, and the following related statutes: 9 U.S.C.A. 4; 29 U.S.C.A. 185; 42 U.S.C.A. 1981, 1983, 1985(3).

3. Venue is proper in this court as all the defendants reside in the District of Columbia. The claim arose in this district.

4. Plaintiff demands a jury trial.

5. This action also seeks a retroactive promotion, back pay, attorney's fees as pro se appearance and costs, as well as compensatory and punitive damages under 42 U.S.C.1981

and 1983 and further relief as this Court may deem equitable and proper.

III. PARTIES:

6. Plaintiff, Dr. Brahma S. Kaushiva, is an Asian Indian male who has been employed by Defendant University of the District of Columbia since September 16, 1973, then known as the Washington Technical Institute, as professor of Fish, Game and Wildlife. He is currently professor in the Department of Earth and Life Sciences within the Division of Natural Resources of the College of Life Sciences. Hereinafter "Dr. Kaushiva".

7. The Board of Trustees is the body responsible for establishing and enforcing all the policies at the University of the District of Columbia, including the policies regarding employment practices, with the power to make contracts, to sue and be sued and complain and defend its own name. Hereinafter "the Board of Trustees".

8. Defendant, University of the District of Columbia, herinafter "the University". is a public institution of higher education in, and an agency of, the District of Columbia, which has assumed control of the operation of erstwhile Washington Technical Institute (W.T.I.).

9. Defendant, Dr. Robert L. Green, hereinafter "Dr. Green", is the President of the University of the District of Columbia since August 1, 1983.

10. Defendants Mr. Larry Adams, Dr. Elizabeth Abramowitz, Mr. Donald Brown, Mr. Ronald H. Brown, Dr. Lucy M. Cohen, Mr. Peter Benjamin Edelman, Dr. Daniel I. Fivel, Mr. F.D.R. Fox, Dr. Thomas A. Hart, Dr. Virginia Howard. Ms. Concha Johnson, Dr. N. Joyce Payne, Dr. Herbert O. Reid, Mr. Terry B. Thomas, Mr. Joseph Webb, and Mrs. Lorraine Whitlock, individually and as members of the Board of Trustees, are and have been members of the Board of Trustees.

11. Defendant Dr. Ewaugh F. Fields, hereinafter "Dr. Fields", is the Interim Provost and the Vice President for Academic at the University of the District of Columbia.

12. Defendant Dr. Annye C. Buck, hereinafter "Dr. Buck", is the Dean of the College of Life Sciences.

13. Defendant Dr. William E. Hyman, hereinafter "Dr. Hyman", is the Associate Dean in the College of Life Sciences.

14. Defendant Dr. Albert Jose' Jones, hereinafter "Dr. Jones", is the Chairman of the Department of Environmental Science within the College of Life Sciences.

15. Defendant Dr. James R. Preer, hereinafter "Dr. Preer", is the Coordinator in the Department of Environmental Science within the College of Life Sciences.

16. Defendant Dr. Victoria C. Guerrero, hereinafter "Dr. Guerrero", is the Chairperson of the Department of Earth and Life Sciences within the College of Life Sciences.

17. Defendant Patty M. Whitaker, hereinafter "Mrs. Whitaker", is the secretary in the Department of Earth and Life Sciences within the College of Life Sciences.

18. Defendant Mrs. Janet B. Counts, hereinafter "Mrs. Counts", is the secretary in the Department of Mortuary Science within the College of Life Sciences.

19. Defendant, University of the District of Columbia Faculty Association, National Educatin Association, hereinafter "the Association", is the collective bargaining agent and has the duty of fair representation for the professional faculty at the University.

IV. FACTUAL ALLEGATIONS:

20. On June 10, 1975 (amended December 30, 1975) and on November 26, 1976, plaintiff filed a complaint of discrimination against him by the Washington Technical Institute (W.T.I.) and harassment on the basis of national origin (Asian Indian). The complaint

was filed because he believed that WTI had discriminated against him, particularly with respect to its decision not to renew his contract as a professor.

21. On May 26, 1976 the District of Columbia Office of Human Rights (OHR) issued a probable cause determination indicating that plaintiff's national origin was a factor in WTI's decision not to renew his contract.

22. Despite this determination, WTI terminated plaintiff's employment effective from June 15, 1976 and thus he remained terminated for nearly four years while he fought this adverse action.

23. On February 24, 1978 the EEOC overruled the OHR probable cause determination and concluded that there was not cause to believe that plaintiff had been discriminated against.

24. Finally, on March 14, 1980, an arbitration panel determined that WTI had acted improperly in not renewing plaintiff's

contract in 1976 and that he should be reinstated to his former position with back pay, seniority, status, rights and benefits.

25. More specifically, the remedial portion of the decision said:

> "The University's board of trustees shall reinstate him in the position he held when his grievance was first initiated ... with all pay, allowances, benefits, seniority, status and rights that he would have received had this improper termination not occured. However, this in not an award of the status as a tenured professor which the CBA provides for fulltime teaching members after three years. UDC shall be allowed one academic year beginning with Dr. Kaushiva's reinstatement to evaluate him for this purpose." (Dr. Brahma S. Kaushiva and the University of the District of Columbia, FMCS Arbitration No. 78K/18983, p. 11)

26. This award was initially confirmed by Order of D.C. Superior Court Judge Goodrich on July 18, 1980 and modified slightly (4% interest instead of 6%) by Order of Judge Goodrich on September 15, 1980. (Kaushiva v. Local 2142, et al., C.A. No.5792-77), Civil I - Judge Goodrich, Court Order July 18, 1980, p.8).

27. WTI merged into the University of the District of Columbia (UDC) during the four year period plaintiff was fighting his improper termination.

28. Effective April 14, 1980 plaintiff returned to UDC pursuant to the arbitration award.

29. Since his return he has been subjected to harassment and behavior that he believes is discriminatory retaliation as well violative of Title VII's "opposition clause" and "participation clause (704(a) of Title VII).

30. The plaintiff has encountered the following problems since his return to UDC

which lead him to believe that he has been improperly and disparately treated:

1. UDC's failure to comply adequately with the reinstatement award and court order by assigning plaintiff to a different department to teach different courses and have less seniority than he would if he had been restored to his former position.
2. The Courses assigned to the plaintiff are introductory undergraduate courses used to fulfill a requirement for science courses rather than the courses for majors in Agriculture and Natural Resources he taught before his improper termination.
3. Not evaluating plaintiff for tenure.
4. Improper and discriminatory evaluations 1980-81, 1981-82, 1982-83 and 1983-84 academic years.
5. Denial of Summer Contracts for 1981, 1982, 1983, and 1984.

6. Denial of Sabbatical Leave applying every year since 1980.
7. Denial of Travel Funds to attend professional meetings.
8. Denial of Office and Laboratory Facilities.
9. Denial of Laboratory Equipment and Supplies.
10. Denial of Budget.
11. Recommending adverse action termination against plaintff dated October 19, 1981.
12. Retaliatory reprimand adverse action dated March 23, 1983.
13. Recommending adverse action leading to termination dated October 12, 1983.
14. Retaliatory suspension without pay effective from March 1, 1984 to May 14, 1984 (until the end of AY 1983-84).
15. Dean Annye C. Buck's open intimidatory threat to plaintiff: "I am going to get him if it takes the rest of my

life."

16. Administration's intentions of retaliatory discharge of the plaintiff were reasserted on February 3, 1984 in the recommendation made by Dr. Ewaugh F. Fields:
"Mitigating factors will not permit me to support your termination at this time."

17. Under UDC Resolution No. 84-15 the Unviersity's Board of Trustees has authorized a Reduction-In-Force that impacts on the employment of the plaintiff by disbanding the Department of Earth and Life Sciences in which the plaintiff is a member.

18. A formal notice was issued by the President Robert L. Green regarding the implementation of RIF without following the internal procedures as outlined in Article 19 of the Master Agreement.

19. The Adminstration has made employment conditions for the plaintiff intolerable so that his reinstatement is a constructive retaliatory discharge.

20. Plaintiff was informed on August 26, 1983 of the "Cancellation by Management" for the position of Education Program Coordinator for which he was an applicant and the position was allegedly filled by appointing Dr. Emory M. Levant from the Biology Division other than the Natural Resource Division thereby ignoring his legitimate chance for the position.

21. Improperly filling the postion of Assistant Dean on Jaunuary 5, 1984 for which the plaintiff would have been a candidate had he known about it, particularly due to pending RIF.

22. Grievances filed by the plaintiff regarding :

(a) Cancelled Classes;

(b) Denial of Travel for Attending Professional Meetings;

(c) AWOL for October 4-7, 1983 and November 14-15, 1983 (the latter withdrawn later on);

(d) Transfer of Geoscience and Horticultre Programs from the Department of Earth and Life Sciences in the Fall 1983 without authorization and following the internal procedures fully; and

(e) Removal of Chairperson Dr. Victoria C. Guerrero from the duties of the Chairmanship of the Department of Earth and Life Sciences;

were systematically ignored and remain unresolved.

31. Plaintiff has been attempting to address such problems through court

actions and the grievance and arbitration mechanisms of the faculty collective bargaining agreement and he has exhausted his administrative remedies with the U.S. Department of Education, Office of Civil Rights (OCR) and Board of Trustees, and *EEOC.

32. Consequent to the formal notice of RIF dated July 24, 1984 from the President Robert L. Green and the action by Dean Annye C. Buck to disband the Department of Earth and Life Sciences by her communication of August 7, 1984, a suit directly into the federal court regarding the discriminatory federal aspects is needed to determine the full extent to which UDC has violated

---

Attached *EEOC permission to file a private action in Federal Court. US Department of Justice did not issue Notice of Right to Sue on request by plaintiff.

persistently Title VII's and Title VI's "oppostion clause" and "participaton clause" to protect the civil and constitutional rights of the plaintiff who is in imminent danger of losing his "property" and "liberty".

COUNT ONE

As a first count plaintiff complains of the Board of Trustees; the members of the Board of Trustees in their, individual and official capacity; the University; Dr. Green; Dr. Fields; Dr. Buck; Dr. Hyman; Dr. Jones; Dr. Preer; Dr. Guérrero; as follows:

32. Plaintiff alleges as of this count each and every allegation contained in paragrapgh 20-31, with the same force and effect as if fully set forth herein.

33. Plaintiff is a tenured faculty member of the University of the District of Columbia of age 65 and East Indian national origin.

34. Dr. Kaushiva's excellent training and high qualifications, his quarter of centuary

of teaching experience at national and international levels, ten years of which have been at the University of the District of Columbia, combine to give him an outstanding background for academic leadership.

35. On January 12, 1984 he applied for the position of Provost and Vice President for Academic Affairs and indicated in his application his secondary option for the position of Distinguished Professorship for which he has been nominated by his peers.

36. Dr.Kaushiva received his early education in India, and he completed his work on Master and Ph.D. degrees at the University of Michigan. He has taught science and biology at various levels and has conducted summer courses and workshops in innovative areas developing indigenous solutions. He has worked in the capacity of UNESCO Expert under Science Teacher Training Project in Ghana for two years (1966-68).

37. The individual defendants have acted,

combined and conspired to violate plaintiff's rights and subjected him to disparate treatment as hereinbelow set forth by, inter alia;

a. Purporting to transfer plaintiff from one department to another at UDC without assigning speciality in flagrant violation of the CBA and reinstatement order of July 18, 1980.

b. Preventing plaintiff from receiving his pay checks and improperly witholding his contracts therebly making plaintiff "beg" to receive money which he has earned and which is lawfully due him.

c. Falsifying, concealing and denying records and evaluation records which permit plaintiff to receive nondiscriminatory faculty privileges.

d. Discouraging students from registering in plaintiff's classes and seeking to induce students to file complaints and not to register in plaintiff's classes and then discriminately cancelling the classes.

e. Failing to reinstate plaintiff to his former position.

f. Refusing to grant Reserved Interest Status (RIS) initially.

g. Failing to conduct valid and proper annual evalustions as required under the Master Agreement and changing satisfactory evaluations to an unsatisfactory evaluation and by issuing a terminal contract initially or witholding the delivery of the contract.

h. Refusing to grant sabbatical leave.

i. Refusing to grant summer contracts for 1981, 1982, 1983, and 1984.

j. Initiating adverse actions with the intent to termination on false grounds and ignoring plaintiff's grievances on the same subject matters.

k. Subjecting the plaintiff to differential treatment in several administrative areas such as denial of facilities and resources e.i., xerox, typing, laboratory space and equipment, supplies, budget, travel,

course speciality, access to record, laboratory space, programs and research.

1. Proffering false and frivolous charges against plaintiff in order to harass plaintiff and discriminate against him, to hold him out for contempt and ridicule and derision by and before his colleagues, and to dissipate his intellectual property and to distract plaintiff from his scholarly and teaching duties at UDC.

The above instances of specific abuse and discrimination are merely representative and not exhaustive of the instatnces of the improper and disparate conduct by the defendants.

38. There is a pattern of discrimination at UDC that persons of Dr. Kaushiva's ethnic group (East Indian) must have a full Ph.D. to be a professor. Other ethnic groups don't have to possess a terminal degree to be a professor. For example, at WTI (old component of UDC) there were 28 full time professors of

which 11 had no Ph.D. degree, 7 blacks and 4 white males. No Hispanics Asian or females were professors without a Ph.D. Also it is to be pointed out that nobody at top management is Hispanic, White or Asian. Again, this definite pattern of disparate treatment results in the lower rank, title, and salary level for Whites, Hispanics and Asian Indians that is out of proportion to their availability in the work force.

39. The defendants have deprived plaintiff of his rights under the law and constitution because of his national origin and age, and to hound and harass plaintiff out of the UDC, which is predominantly a Black institution.

40. Defendants have violated plaintiff's rights under the civil rights laws including but not limited to 42 U.S.C.A. 1981, 1983.

WHEREFORE, Plaintiff sues and demands judgement as prayed herein.

COUNT TWO

41. Plaintiff realleges as similarly numbered

paragraphs of this Count, paragraphs 20 to 40 and further pleads:

42. Plaintiff has been subjected to reprisals, retaliation, and discriminatory harassment since his return to the University in 1980.

43. The University has failed to comply with the reinstatement order directing that Dr. Kaushiva be reinstated to his former position had he not been improperly terminated. This persistent pattern of bad faith on the part of UDC with respect to his placement and seniority is an example of the reprisal, retaliation and discriminatory harassment to which Dr. Kaushiva has been continuously subjected.

44. Plaintiff has been subjected to discriminatory retaliation by UDC's actions in initiating adverse actions against him:

a. Suspension without pay effective March 1, 1984 to May 14, 1984.

b. Elimination of Department of Earth and Life Sciences where plaintiff is

one of the members.

c. Serving official notice for the Reduction-In-Force jeopardizing the employment of the plaintiff at UDC dated July 24, 1984.

d. UDC's differential treatment of Dr. Kaushiva in several administrative areas.

45. Defendants have acted, combined and conspired in a civil conspiracy to violate plaintiff's rights under 42 U.S.C.A. 1985(3) and other provisions of Title VII and Title VI.

COUNT THREE

46. Plaintiff realleges as similarly numbered paragraphs of this Count, paragraphs 20-45 of Count Two and further pleads:

47. The defendants have breached plaintiff's contract with UDC or acted, combined and conspired to induce a breach of the contract between UDC and plaintiff, including the convenant of fair dealing which is explicit in

the contract between UDC and plaintiff.

COUNT FOUR

48. Plaintiff realleges as similarly numbered paragraphs of this Count, paragraphs 20-47 of Count Three and further pleads:

49. Plaintiff has established commercial and contractual relationships between himself and UDC.

50. The individual defendants have sought to interfere with, and have interfered with, plaintiff's existing commercial relationships and contractual relationships between himself and UDC.

COUNT FIVE

51. Plaintiff realleges as similarly numbered paragraphs of this Count, paragraphs 20-50 of Count Four and further pleads:

52. Based on his status as a tenured and Reserved Interest Status faculty member of UDC, plaintiff has established expectancy in continued future commercial relationships between himself and UDC, including promotion

and facilities which are granted in the normal course to senior professors and faculty members.

53. The individual defendants have sought to interfere with, and have interfered with, plaintiff's future commercial relationships and contractual relationships between himself and UDC.

COUNT SIX

54. Plaintiff realleges as similarly numbered paragraphs of this Count, paragraph 20-53 of Count Five and further pleads:

55. The defendants have breached the collective bargaining agreement between plaintiff and UDC.

56. Defendants have violated numerous provisions of the CBA deliberately, intentionally, wilfully, and wantonly, and sought to deprive plaintiff of his rights under the CBA.

COUNT SEVEN

57. Plaintiff realleges as similarly numbered paragraphs of this Count, paragraphs 20-56 of Count Six and further pleads:

58. The defendants have violated plaintiff's rights under the Arbitration Act, by failing to comply with the provisions of the arbitration award and the provisions of the CBA calling for arbitration of grievances.

COUNT EIGHT

59. Plaintiff realleges as similarly numbered paragraphs of this Count, paragraphs 20-58 of Count Seven and further pleads:

60. The individual defendants have sought to inflict, and have inflicted severe emotional distress on plaintiff, inter alia,

a. Witholding plaintiff's pay check and contract and harassing him and making him "beg" the money he has lawfully earned according to his contract;

b. Seeking to harass him by discriminatory practice closing his class and seeking to prevent him from devoting time to his scholarly and professional pursuits by suspending him without pay; and

c. Eliminating his department and

exposing him to RIF improperly.

COUNT NINE

61. Plaintiff realleges as similarly numbered paragraphs of this Count, paragraph 20-60 of Count Eight and further pleads;

62. The individual defendants have conspired to commit a personal tort by

a. Making false accusations;

b. Falsifying evaluation records;

c. Maliciously cancelling plaintiff's classes and discouraging student enrollment in plaintiff's classes; and

d. Deliberately and maliciously withholding contractual monies lawfully due plaintiff.

COUNT TEN

63. Plaintiff realleges as similarly numbered paragraphs of this Count, paragraphs 20-62 of Count Nine and further pleads:

64. Plaintiff has due process rights arising out of both the CBA and the fact the defendant

university is a quasi-governmental state agency wherein plaintiff's salary is paid by appropriated taxpayer funds.

65. The defendants have sought to, and have in fact, violated plaintiff's rights to due process under the CBA and the Constitution of the United States.

COUNT ELEVEN

66. Plaintiff realleges as similarly numbered paragraphs of this Count, paragraphs 20-65 of Count Ten and further pleads:

67. As the bargaining agent for the CBU, defendant UDC/fa/NEA has substantial control over plaintiff's ability to protect his rights within the scope of the CBA.

68. Although the president of the local association UDC/fa/NEA has made efforts to assist plaintiff, said individual has no experience in labor law or negotiations, is not a lawyer, and lacks the ability to vindicate the rights of members which the Association has assumed to represent under the CBA.

69. The UDC/fa/NEA has breached its duty of fair representation because

a. It has refused to respond to plaintiff's requests for financial and legal assistance; and

b. UDC/fa/NEA is unable to vigorously discharge the duties which it has assumed to discharge as bargaining agent.

70. 28 U.S.C. 1337 provides jurisdiction to this Court over Count Eleven of the Complaint, Association's breach of its duty of fair representation, breach of collective bargaining agreement.

WHEREFORE, Plaintiff sues and demands judgment as prayed herein.

V. PRAYER FOR RELIEF:

PLAINTIFF SUES AND DEMANDS JUDGMENT AS FOLLOWS:

1. Money damages in the amount of $200,000 per count, for a total of $2.2 million.

3. Injunctive relief as may appear appropriate after trial and verdict including, but not limited to, injunctions barring defendants from violating plaintiff's rights, ordering back pay, and retroactive restitution and reinstatement of all rights, benefits and status which plaintiff would have enjoyed but for the unlawful actions of the defendants.

4. Attorney fees for pro se apperance and research and other costs.

5. Any and all other relief necessary to do complete justice between the parties.

Respectfully submitted,

Sd/-

DR. BRAHMA S. KAUSHIVA, pro se
4623 Lincoln Avenue
Beltsville, Maryland 20705
(301) 937-2408

August 15, 1984

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

WASHINGTON DISTRICT OFFICE
1717 H Street, N.W.
Washington, D.C. 20006

Charge Number: 032-52127-6
Charging Party: Brahma Kaushiva
Respondent: Washington Technical Institute

DETERMINATION

Under the authority vested in me by 29 C.F.R. Section 1601.21(d) of the Commission's Procedural Regulations (September 23, 1977), I issue on behalf of the Commission, the following determination as to the merits of the subject charge.

Respondent is an employer within the meaning of Title VII of the Civil Rights Act of 1964, as amended, and the timeliness, deferral and all other jurisdictional requirements have been met. Substantial weight has been accorded the findings of the District of

Columbia Office of Human Rights, which are attached.

Having examined the District of Columbia Office of Human Rights' findings and the record presented, I conclude that there is not reasonable cause to believe that the charge is true

This determination concludes the Commission's processing of the subject charge. Should the Charging Party wish to pursue this matter further, he/she may do so by filing a private action in Federal District Court within ninety (90) days of the receipt of NOTICE OF RIGHT TO SUE which will be issued by the United States Department of Justice and by taking the other procedural steps set out in that NOTICE OF RIGHT TO SUE.

ON BEHALF OF THE COMMISSION

Date 2/24/1978

Sd/-

Clarence Bell, Director
Washington District Office

April 17, 1985

CERTIFIED MAIL

NOTICE OF RIGHT
TO SUE WITHIN
90 DAYS

Brahma S. Kaushiva, Ph. D.
4623 Lincoln Avenue
Beltsville, Maryland 20705

Re: EEOC Charge Against Washington Technical Institute, et al.
No. 032521275

Dear Dr. Kaushiva:

Because the above charge you filed with the Equal Employment Opportunity Commission has been dismissed, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 200e, et seq., against the respondents named in your charge.

If you choose to commence a civil action, such suit must be filed in the appropriate United States District Court within 90 days of your receipt of this Notice.

The investigative file pretaining to your

case is located in the EEOC Area Office, 1717 H Street, N.W., Suite 402, Washington D.C. 20006.

This Notice should not be taken to mean that the Department of Justice has made a judgment as to whether or not your case is meritorious.

Sincerely,

Wm. Bradfird Reynolds
Assistant Attorney General
Civil Rights Division

By: Sd./
Herbert A. Goldsmith,Jr.
Attorney
Employment Litigation
Section

Bias Seen in Firing Of Indian at WTI

WASHINGTON STAR
July 1976

By Robert Pear
Washington Star Staff Writer

The D.C. Office of Human Rights has tentatively upheld a job discrimination complaint against Washington Technical Institute, finding that the college refused to renew the contract of an Indian-born professor partly because of his national origin.

The case, still subject to a hearing and further efforts at conciliation, involves Brahma Kaushiva, a 57-year-old professor of fish, game and wildlife at the vocational college.

The Human Rights Office has found probable cause to believe Kaushiva was the victim of "invidious prohibited discriminatory conduct."

"BUT FOR THIS conduct, we find that complainant (Kaushiva) would have been retained as a professor," the investigation report said. "We can see no other reason, based on the evidence, why not."

The findings have not been made public, but were uncovered last week from official sources.

The Human Rights Office found Kaushiva was the only person of East Indian origin among approximately 20 faculty members in WTI's Department of Agriculture and Natural Resources.

Representatives of WTI and the District government have failed to appear at the Human Rights Office for several scheduled conferences on Kaushiva's case.

In a recent letter, Cleveland L. Dennard, president of the institute, asked James W. Baldwin, director of the Human Rights Office, to reexamine the facts of Kaushiva's case.

He said that Indians accounted for about 8 percent of the instructional staff when other departments were included in the calculations.

On this and other aspects of the case, Dennard said, there was a lack of communication between WTI and the Human Rights Office.

THE INVESTIGATION report described Kaushiva as "the only professor in his department evaluated" — "the only professor to receive classroom visitations and evaluations."

WTI officials, it said, "failed to show, upon request, or demonstrate that (Kaushiva's) work was anything other than satisfactory from '73 through '74."

Kaushiva had argued that unfavorable evaluations of his work were "inaccurate, incomplete, biased and purposely made to oust him."

Kaushiva, who has a Ph.D. in biology from the University of Michigan, had been at Washington Tech since 1973.

WTI, in explaining its refusal to renew Kaushiva's contract, said the professor performed his teaching duties poorly, failed to adhere to course objectives and spent too much time on outside activities.

Students supposedly signed a petition expressing dissatisfaction with his teaching methods.

But, according to the Human Rights Office, WTI "failed to submit alleged student petitions voicing their disagreement" with Kaushiva.

The professor, on the other hand, "submitted student evaluations of his materials and classroom presentations" and "they were all favorable."

The investigation found that Kaushiva had a contract for the 1974-75 academic year with a salary of $16,825, later raised retroactively to $20,950 a year.

ATTACHMENT X

WASHINGTON STAR

July 1976

IN NOVEMBER 1974, Kaushiva's superiors recommended he not be re-hired. He responded by asking the administration for specific charges so he could try to rebut the allegations.

"The administration failed to respond with specifics," the Human Rights Office found.

In December 1974, Kaushiva got a letter from Dennard informing him that he would not be offered a contract for a faculty appointment in the 1975-76 academic year.

Kaushiva appealed to the local union and to a professional relations committee on campus. Both organizations asserted he had been treated unfairly and recommended that he be given a renewable contract for 1975-76, according to the Human Rights Office.

Dennard, in a letter to Baldwin, said Kaushiva was eventually given a contract for the past academic year only because the written notification of nonrenewal had been delayed five days beyond the date stipulated by the collective bargaining agreement.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DR. BRAHMA S. KAUSHIVA :

V. :

BOARD OF TRUSTEES OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA : C.A. 84-2517

: FILED Sept. 22, 1986

James F. Davey
Clerk

ORDER

This matter is before the Court on plaintiff's Motion for Reconsideration, Clarification and Instruction, plaintiff's Motion for Reconsideration of Magistrate's Ruling, and plaintiff's Opposition to Taxation of Bill of Costs. The Court has considered voluminous motions, memoranda, attachments and supplements submitted by the plaintiff, as well as the oppositions and the entire record.

Plaintiff requests reconsideration, clarification and instruction regarding the

Court's Order of May 9, 1986, granting defendant Faculty Association summary judgment and denying plaintiff's motion for partial summary judgment. Plaintiff contends summary judgment should have been entered on his behalf as to certain "facts" which he alleges are not in dispute. The Court concluded that these facts were in dispute. Furthermore, partial summary judgment would not have been appropriate as plaintiff is not entitled to judgment on his complaint as a matter of law, based on several isolated facts even if they were not in dispute.

Plaintiff contends the Court erred in granting summary judgment for defendant Faculty Association. The Court concluded this defendant was only a party under Counts II and VII of plaintiff's complaint. There are no facts in dispute as to these counts, and this defendant is entitled to judgment as a matter of law as detailed in the Court's

Order of May 9, 1986. Plaintiff contends this defendant is still a party to Count XI which was dismissed by Judge Flannery. Judge Flannery exercized his discretion in dismissing this pendent claim which was also before the Superior Court and the District of Columbia Court of Appeals. Although plaintiff has withdrawn that seperate action, the Court concludes that it is not obligated to hear this pendent claim. Accordingly, plaintiff's Motion for Reconsideration, Clarification and Instruction is hereby DENIED.

Plaintiff moves for Reconsideration of Magistrate Dwyer's Ruling denying plaintiff's discovery requests since the Faculty Association. The Faculty Association should not be subject to discovery requests and, accordingly, plaintiff's Motion for Reconsideration of Magistrate's Ruling is hereby DENIED. 1/

1/ Plaintiff erroneously contends that his motion for reconsideration of the Magistrate's

Finally, plaintiff opposes taxation of defendant Faculty Association's Bill of Costs. The Court concludes the costs are not excessive nor oppressive, and hereby ORDERS that plaintiff's opposition be DENIED.

SO ORDERED.

Sd/-

George H. Revercomb, Judge

September 22, 1986
Date

1/contd.

rulings of May 19 and JUne 6, 1986, are pending before the Court. Those motions were before the Magistrate and were denied on June 27, 1986.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DR. BRAHMA S. KAUSHIVA	:
v.	:
BOARD OF TRUSTEES OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA	:C.A. NO. 84-2517
	:Filed Oct. 24, 1986
	:James E. Davey Clerk

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Plaintiff's "Petition Regarding Bias or Prejudice of Judge", seeking to have the Court recuse itself. The Court has considered the petition and the allegations contained in the accompanying affidavit, as well as the entire record.

The Court recongnizes that there is as much an obligation not to recuse when there is no occasion to do so, as there is to recuse when there is an adequate reason.

Wolfson v. Palmieri, 396 F. 2d 121 (C.A.N.Y. 1968). 28 U.S.C. Sec. 144 requires recusal only when a party submits a sufficient affidavit. The test to apply is whether a reasonable person would conclude the judge is biased or prejudiced. The bias must be based upon something other than rulings and be personal, which generally requires that such be established by matters outside and apart from litigation. See, Hanger v. U.S., 398 F.2d 91 (8th Cir. 1968); Crider v. Kechane, 484 F. Supp. 13 (W.D. Okl. 1979).

The only claims plaintiff makes of personal bias relates to: 1)Magistrate Dwyer's statement that the Court requested that a schedule be set up "looking towards terminating this litigation." (Transcript of motions hearing before Magistrate Dwyer, February 11, 1986, p.2) and 2) The Court's previous affiliation with the Superior Court of the District of Columbia.

With regard to the first claim, plaintiff takes personal offense to the use of the word "terminating," and interprets this to indicate an intent to dispose of the claims without proper consideration. The continuation of the Magistrate's statement, however, indicates that the case will not be pre-tried or tried until the time is appropriate. (Tr. at 2). In this context, the Court concludes that a reasonable person would believe the word "terminating" is intended to mean "coming to an expeditious resolution." It is beneficial to the parties and civil justice that all cases be concluded expeditiously.

With respect to plaintiff's second claim, plaintiff alleges the Court's judgment is distorted due to the Court's previous ties to the Superior Court of the District of Columbia.1/ Plaintiff provides no support, for this bare allegation, other than

his "presumption" that this case had previously beeen reassigned because of publicity of the Superior Court litigation. (Plaintiff's affidavit at 2).

The Court concludes that a reasonable person would not believe the Court is prejudiced based on this conclusory statement.

Having failed to submit a sufficient affidavit establishing bias or prejudice based on matters apart from rulings, plaintiff's petition is hereby DENIED 2/

All parties are to appear before the Court for a status hearing on October 28, 1986 at 11:00 a.m.

SO ORDERED.

Sd./
George H. Revercomb, Judge

October 24, 1986
Date

T-4

FOOTNOTES:

1/ Plaintiff apparently had related claims in Superior Court before bringing litigation in this court.

2/ Plaintiff alleges on page 7 of his affidavit that the Court has restricted the complaint to Title VII only and has shifted the burden of proof on plaintiff. For purposes of clarification to the plaintiff, the Court will address this even though it relates to a ruling of the Court. Plaintiff is apparently referring to an observaton of the Court made in dictum in the Court's Order of May 9, 1986, at page 3. The Court noted that "this case may proceed more appropriately as an employment discrimination complaint under Title VII." The Court thereafter provided the proper sequence of the shifting of the burden of proof in a Title VII compalint. The Court was not precluding any of plaintiff's non-Title VII claims which are still viable.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

OCTOBER 16, 1987

Dr. Brahma S. Kaushiva
14405 Culp Court
Silver Spring, Maryland 20904

Dear Dr. Kaushiva:

Re: Kaushiva v. Board of Trustees of the University of the District of Columbia
Civil Action No. 84-2517

In response to your letter of Complaint, please be advised that I have no authority to intervene in the cases of any other Judge of this Court. I note from the docket that you have appealed your case, as you have a right to do. Any further material pertaining to your case should be directed to the Court of Appeals.

Sincerely,

Sd./

Aubrey E. Robinson, Jr.
Chief Judge

DISTRICT OF COLUMBIA COMMISSION
ON JUDICIAL DISABILITIES AND TENURE
BUILDING A. ROOM 312 515 FIFTH ST., N.W.,
WASHINGTON, D. C. 20001

MARCH 21, 1983

Dr. Brahma S. Kaushiva
4523 Lincoln Avenue
Beltsville, Md. 20705

Dear Dr. Kaushiva:

Your complaint against Judges William E. Stewart, Jr. and Steffen Graae has been reviewed in detail and considered by the full Commission. Because of the statutory provisions imposing confidentiality on our proceedings, we are unable to advise you as to what action the Commission took.

The Commission appreciates your interest in our courts and encourages you and all citizens to bring incidents of suspected judicial misconduct to our attention.

Thank you very much.

Sincerely yours,

Sd./
William W. Taylor, III
Chairperson

SUBPOENA

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

TO:
Dr. Elvira Paz
UDC
4200 Connecticut Avenue, N.W.
BLDG. 44 202E
Washington, D.C. 20008

YOU ARE HEREBY COMMANDED TO APPEAR IN THE UNITED STATES DISTRICT COURT AT THE PLACE DATE AND TIME SPECIFIED BELOW TO TESTIFY IN THE ABOVE-ENTITLED CASE.

PLACE:

U.S. DISTRICT COURT FOR D.C.
3RD & CONSTITUTION AVE, N.W.
WASHINGTON, D.C. 20001

COURTROOM - NO. 10 (TEN)

DATE AND TIME- APRIL 9, 1987
11:00 A.M.

BRING:

ALL DOUCUMENTS IN YOUR POSSESSION REGARDING THE EVALUATION OF DEAN ANNYE BUCK IN YOUR CAPACITY AS THE CHAIRMAN OF THE SENATE COMMITTEE ON DEAN'S EVALUATION, 1986 TO PRESENT.

Sd/.

MELINDA L. PUGH
DEPUTY CLERK

APRIL 6, 1987
DATE

SUBPOENA

UNITED STATES DISCTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TO:
DR. YUEN S. LEE
DEPT OF FOOD SERVICE OF UDC
BLDG. 44, #202
4200 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20008

You are hereby commanded to appear in the United States District Court at the place, date, and time specified below to testify in the above-entitled case.

PLACE:

U.S. District Court for D.C.
3RD and Constitution Avenue, N.W.
Washington, D.C.

Courtroom No. 10 (Ten)

Date and Time- April 9, 1987 11:00 A.M.

You are also commanded to bring with you the following documents or objects.

All documents in your possession regarding your adverse action from 1980 to present, particularly during academic years 1984-85, 1985-86 and 1986-87.

SUBPOENA - DR. YUEN S. LEE CONT'D

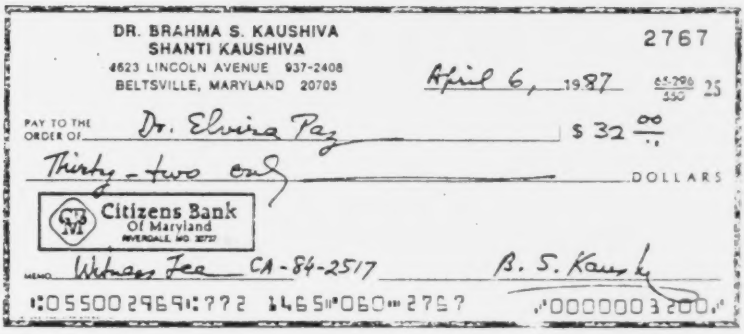
All documents in your possession regarding your termination proceedings from 1980 to present particularly during academic years 1984-85, 1985-86 and 1986-87.

All documents in your possessin pertaining to your granting and availing of sabbatical leave from 1980 to present, particularly during academic years 1984-85, 1985-86 and 1986-87.

Sd/.
Melinda L. Pugh

April 6, 1987
Date

Dr. ELVIRA PAZ & DR. YUEN S. LEE WITNESS FEES AND MILEAGE RECEIPTS



DR. BRAHMA S. KAUSHIVA
SHANTI KAUSHIVA
4623 LINCOLN AVENUE 937-2408
BELTSVILLE, MARYLAND 20705

2767

April 6, 1987 — 65-296/550 25

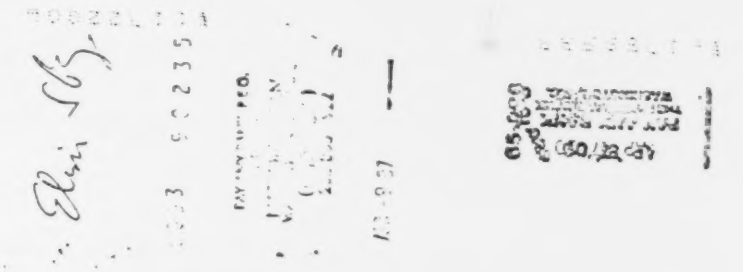
PAY TO THE ORDER OF Dr. Elvira Paz — $ 32 00

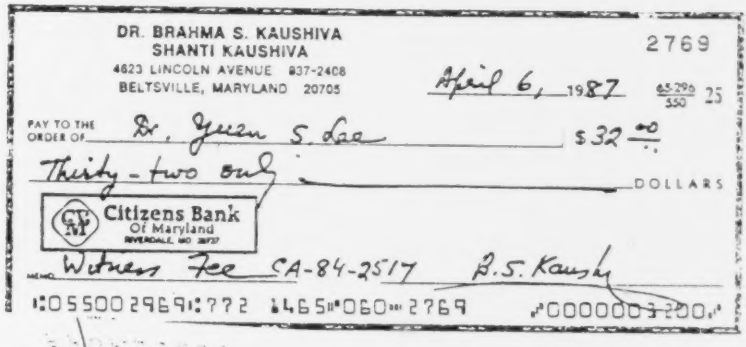
Thirty-two only — DOLLARS

Citizens Bank Of Maryland
RIVERDALE, MD 20737

Witness Fee CA-84-2517 — B. S. Kaush

:055002969: 772 1465 060 2767 "000003200"





DR. BRAHMA S. KAUSHIVA
SHANTI KAUSHIVA
4623 LINCOLN AVENUE 937-2408
BELTSVILLE, MARYLAND 20705

2769

April 6, 1987 — 65-296/550 25

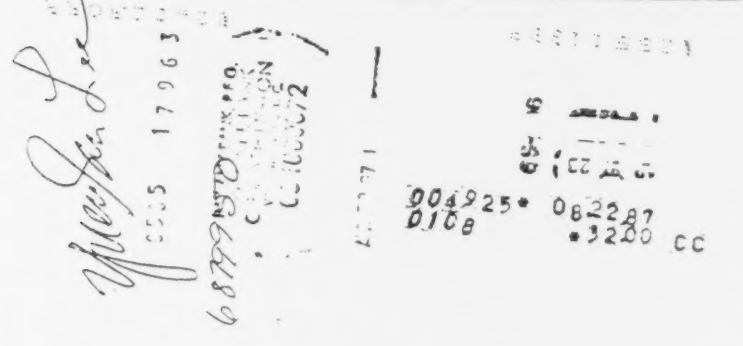
PAY TO THE ORDER OF Dr. Yuen S. Lee — $ 32 00

Thirty-two only — DOLLARS

Citizens Bank Of Maryland
RIVERDALE, MD 20737

Witness Fee CA-84-2517 — B.S. Kaush

:055002969: 772 1465 060 2769 "000003200"



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Brahma S. Kaushiva

Plaintiff

v. CIVIL ACTION NO.
CA 84-2517

Board of Trustees of UDC, et al.

Defendants

To. Dr. James R. Preer, UDC
4200 Connecticut Avenue, N.W.
Washington, D.C. 20008
Bldg. 44, 2185

You are hereby commanded to appear in U.S. District Court for the District of Columbia Court Room No. 10 (ten), to give testimony in the above entitled cause on the 9th of April, 1987, at 11:00 a.m. and bring with you all documents in your possession regarding teaching assignments, discourteous behavior, student complaints, adverse actions, laboratory space, secretarial aid and laboratory aid regarding Dr. Kaushiva for the period 1980 to present, particularly academic years 1980-81, 1981-82 and 1982-83.

Sd/.

Robert L. Line
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TO:

Dr. Albert Jose-Jones
Acting Dean, College of Life Scineces
UDC
4200 Connecticut Ave., N.W.
Bldg. 44, Room 102
Washington, D.C. 20008

You are hereby commanded to appear in the United States District Court at the place, date and time specified below to testify in the above-entitled case.

Place:

U.S. District Court of D.C.
Courtroom 10 (Ten)
3RD and Constitution Avenue, N.W.
Washington, D.C.

Date and Time: April 9, 1987, 11:00 A.M.

You are also commanded to bring with you the following documents.

All records of student complaints on Dr. Kaushiva from 1980 to present.

All records pretaining to the fire in room 112 Bldg. 44 at UDC.

All records of locations of boxes and materials belonging to Dr. Kaushiva.

SUBPOENA - Dr. Albert Jose-Jones Cont'd.

All recordes of assets and equipment of the College of Life Sciences of UDC on the elimination of the Department of Earth and Life Sciences on July 15, 1985.

All records pertaining to the appointments, promotions and positions held of Dr. Albert Jose-Jones 1973 to present, Dr. Emory Levant 1980 to present, Dr. Jean Grant, 1980 to present and Dr. Victoria C. Guerrero 1974 to present.

Sd/.

Melinda L. Pugh
Deputy Clerk

April 6, 1987
DATE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TO:
Dr. Victoria C. Guerrero
UDC
4200 Connecticut Avenue, N.W.
Bldg. 44, 203C
Washington, D.C. 20008

You are hereby commanded to appear in the United States District Court at the place, date and time specified below to testify in the above-entitled case.

PLACE:
United States District Court
Courtroom No. 10 (ten)
3rd and Constitution Avenue, N.W.
Washington, D.C.

DATE AND TIME: April 9, 1987, 11:00 A.M.

You are also commanded to bring with you the following documents:

All documents in her possession regarding student complaints against Dr. Kaushiva received by her from 1982 to present.

All documents in her possession regarding the location of boxes of materials belonging to Dr. Kaushiva.

Sd./
Melinda L. Pugh
Deputy Clerk

April 6, 1987
Date

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TO:

Dr. Samuel Sullivan
Acting Provost and Vice President
of Academic Affairs,
Bldg. 39, 3RD floor
UDC
4200 Connecticut Avenue, N.W.
Washington, D.C. 20008

You are hereby commanded to appear in the United States District Court at the place, date and time specified below to testify in the above-entitled case.

PLACE:

United States District Court for
District of Columbia
Courtroom No. 10
3rd. & Constitution Avenue, N.W.
Washington, D.C.

DATE AND TIME: April 9, 1987, 11:00 A.M.

You are also commanded to bring with you the following documents.

All records pertaining to the evaluation of Dr. Kaushiva from 1986 to present.

All records pertaining to the sabbatical leave requests of Dr. Kaushiva.

SUBPOENA - Dr. Samuel Sulivan Cont'd

All records pertaining to the sabbatical leave requests of Dr. Lee, 1980 to present, Dr. Victoria C. Guerrero and Dr. William E. Hyman, 1977 to present.

All records pertaining to the sabbatical requests of Dr. Annye C. Buck, 1980 to present.

All records of appointments with Dr. William E. Hyman from 1977 to present

All records pertaining to the appointments promotions and positions held of Dr. Albert Jose-Jones 1973 to present, Dr. Emory Levant 1980 to present, Dr. Jean Grant, 1980 to present, and Dr. Victoria C. Gurrero, 1974 to present.

Sd./

Melinda L. Pugh
Deputy Clerk

April 6, 1987
Date

UNITED STATES DISTRICT COURT
FOR THE DISTIRCT OF COLUMBIA

TO:
Dr. William E. Hyman
Acting Associate Vice President for
Academic Affairs,
Bldg. 48
UDC
4200 Connecticut Avenue, N.W.
Washington, D.C. 20008

You are hereby commanded to appear in the United States District Court at the place, date and time specified below to testify in the above entitled case.

PLACE:
United States District Court for DC
Courtroom 10
3rd. & Constitution Ave., N.W.
Washington, D.C.

DATE AND TIME: April 9, 1987, 11:00 A.M.

You are also commanded to bring with you the following documents.

All records of student complaints on Dr. Kaushiva from 1980 to present.

All records pertaining to the fire in room 112, Bldg. 44 at UDC.

All records of locations of boxes and materials belonging to Dr. Kaushiva.

SUBPOENA - Dr. William E. Hyman Cont'd

All records of assets and equipment of the College of Life Sciences of UDC on the elimination of the Department of Earth and Life Sciences on July 15, 1985.
All records pertaining to the appointments, promotions and positions held of Dr. Albert Jose-Jones, 1973 to present, Dr. Emory Levant 1980 to present, Dr. Jean Grant, 1980 to present, and Dr. Victoria C. Guerrero, 1974 to present.

Sd./

Melinda L. Pugh
Deputy Clerk

April 6, 1987

DATE